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No. _____

In the

Supreme Court of the United States

WILLIAM G. HOLLINGSWORTH; LISA R. HOLLINGSWORTH; and JEFFREY D. FERNANDES,

Petitioners,

v.

LANE COMMUNITY COLLEGE; LANE COMMUNITY COLLEGE BOARD OF EDUCATION; JERRY MOSKUS in his official capacity as President of Lane Community College; and LINDA P. FOSSEN in her official capacity as Vice President for Student Services of Lane Community College,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Is the rule of viewpoint neutrality that this Court formulated in *Board of Regents of the University of Wisconsin System v. Southworth*, 120 S. Ct. 1346 (2000), violated when the funding of individual political and ideological student groups depends upon the majority determinations of student referenda?

PARTIES TO THE PROCEEDING

At the time they filed this action, William G. and Lisa R. Hollingsworth and Jeffery D. Fernandes were students at Lane Community College. Lane Community College included in the fees that it required these students to pay as a condition of attending class a special assessment to fund the political and ideological advocacy of the Oregon Student Public Interest Research Group (OSPIRG). This special assessment was imposed on all students as a result of student referenda in 1990, 1993, and 1996.

Lane Community College (the College) is a public community college established pursuant to the laws of the State of Oregon. The College's Board of Education (the Board of Education) is established pursuant to the laws of the State of Oregon. The Board of Education is responsible for the general supervision and control of the College, including ultimate responsibility for determining the amount and purpose of and for authorizing the collection of mandatory student fees. Jerry Moskus is President of the College and has ultimate responsibility for the administration of the College. Linda P. Fossen is the Vice President for Student Services of the College and is responsible for the student registration process, which includes levying mandatory student fees. Ms. Fossen is also responsible for overseeing the disbursement of fees to student organizations at the College.

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PETITION FOR WRIT OF CERTIORARI

William G. Hollingsworth, Lisa R. Hollingsworth, and Jeffrey D. Fernandes respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the Ninth Circuit Court of Appeals is reported at *Hollingsworth v. Lane Community College*, No. 97-35451, 1999 U.S. App. LEXIS 5391 (9th Cir. Mar. 24, 1999). It is reproduced herein at Appendix (App.) A. The Ninth Circuit's order denying the Petition for Rehearing and Suggestion for Rehearing *En Banc* on August 18, 2000, is reproduced and included herein at App. B. The district court's opinion is unreported and is included herein at App. C.

JURISDICTION

This case was filed in the United States District Court for the District of Oregon. The statutory basis for jurisdiction of the district court is 28 U.S.C. § 1331, due to the presence of a federal constitutional question, as well as 28 U.S.C. § 1343(a)(3), which gives federal district courts jurisdiction over civil action to redress the deprivation, under color of state law, of any right secured by the United States Constitution.

The Ninth Circuit Court of Appeals entered its decision on March 24, 1999. Thereafter, Petitioners sought rehearing and rehearing *en banc*. Following issuance of *Board of Regents of the University of Wisconsin System v. Southworth*, 120 S. Ct. 1346 (2000), the Ninth Circuit Court of Appeals directed each party to file a brief on the correct disposition of this case in consideration of *Southworth*. App. D. Notwithstanding the

referendum procedure for determining funding of student political and ideological groups, the court denied rehearing and rehearing *en banc* on August 18, 2000. This Court possesses jurisdiction pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS AT ISSUE

The First Amendment to the United States Constitution provides in pertinent part: "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble . . . ."

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part: "[N]or shall any state deprive any person of life, liberty, or property, without due process of law. . . ."

Title 42, United States Code § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

A. The College's Funding Process

The College requires all students who attend classes at the College's main campus to pay a mandatory Student Activity

Fee (mandatory fee) each term.[1] The mandatory fee provides funding for student organizations at the College. As students, the College forced Petitioners to pay the mandatory fee.[2]

The mandatory fee imposed in this case contained several components. A general fund for student groups is financed by a mandatory fee of $5 per student, and is one part of the total 1996 mandatory fee of $23.25 per student.[3] An additional special assessment, however, is available only to finance the political and ideological advocacy of OSPIRG.[4] That special assessment is the mandatory fee at issue in this case.

In contrast to other student groups funded by the mandatory fee, only OSPIRG is listed separately as a "service."[5] For instance, in 1996 the College listed five different funded services that constitute the total mandatory fee of $23.25.[6] In addition to the $2.25 special assessment

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[1] App. E-3.

[2] *Id.*

[3] App. F-62-64, Declaration of Mark T. Gallagher in Support of Plaintiffs' Motion for Summary Judgment.

[4] App. F-63.

[5] *Id.*

[6] App. F-62-64. Mandatory funding for OSPIRG was approved by student referenda in 1990, 1993, and 1996. App. E-4, Findings and Recommendation. In 1990, the majority of the College students voted to increase the mandatory student fee by $2 per student, per term with the additional $2 to be used solely to fund OSPIRG. *Id.* In 1993, the mandatory funding of OSPIRG was reaffirmed by a student referendum. *Id.* In 1996, a majority of the students voted to

(continued...)

allocated to OSPIRG, the mandatory fee includes a $5 assessment for child care; $6 for student health; $5 for recreation; and, finally, $5 for cultural activities and other expenses.[7] With the exception of OSPIRG, which is segregated as a separate "service," all other student groups compete for funding from the $5 allocated to cultural activities and other expenses.[8] This $5 mandatory fee finances groups such as the Native American Student Association, the Black Student Union, the Lane Computer Society, Students of Multi-Cultural Ethnicity, the Nursing Club, the Alumni Association, the Lane Writers Club, the Latino Club, and the Islamic Club.[9] For example, the Native American Student Association receives 5% of that $5, or a total of twenty-five cents per student per term.[10] The funds collected from this $5 portion of the fee are deposited in the ASLCC Mandatory Fee Account.[11] Student groups then receive reimbursement for approved expenditures.[12] Unlike the procedure followed for other student groups, the special assessment for OSPIRG is disbursed directly to

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[6] (...continued)
increase funding for OSPIRG from $2 to $2.25 per student, per term, for a total mandatory student activity fee of $23.25. *Id.*

[7] App. F-62-64, Declaration of Mark T. Gallagher in Support of Plaintiffs' Motion for Summary Judgment.

[8] App. E-4-5, Findings and Recommendation.

[9] App. E-5.

[10] App. F-62, Declaration of Mark T. Gallagher in Support of Plaintiffs' Motion for Summary Judgment.

[11] App. E-7.

[12] App. F-58, Declaration of Mark T. Gallagher in Support of Plaintiffs' Motion for Summary Judgment.

OSPIRG by the College's finance department.[13] The College has no procedure for tracking how OSPIRG spends this money.[14]

In order to receive funding via this separate assessment method, OSPIRG filed an application with the Director of Student Activities at the College.[15] OSPIRG then had to seek funding approval from the College's Board of Education.[16] More importantly, even though approved by the Board of Education, the funding process required OSPIRG to subsequently secure funding approval from the students at the College via a student referendum.[17] This step is important because it insulates OSPIRG's fee from competition by other student groups. By using this process, OSPIRG's special assessment is imposed for the sole benefit of OSPIRG. Although no further action of the student government can reduce the amount that OSPIRG will receive from mandatory fees, funding approvals are not permanent.[18] Instead, funding must be approved every three years by a majority of the students, and existing funding can be cancelled by a majority student vote.[19] At this election, the political and ideological

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[13] App. E-7, Findings and Recommendation.

[14] *Id.*

[15] App. G-4, Second Affidavit of Barbara Delansky.

[16] *Id.*

[17] App. G-4-5.

[18] App. E-3-4, Findings and Recommendation.

[19] App. E-4.

activities of OSPIRG are touted explicitly as a basis on which students should vote to continue funding.[20]

Students at the College first approved the special assessment for OSPIRG in the form of a $2 per student, per term, increase in the fee during the 1990 student elections.[21] The College used this increase in the mandatory fee ***solely*** to fund OSPIRG through the special assessment.[22] Students reaffirmed mandatory OSPIRG funding in the 1993 and 1996 student referenda.[23] In the 1996 student referendum, the students approved an increase in the special assessment set aside ***specifically*** for OSPIRG from $2 to $2.25.[24] Funding for OSPIRG as a result of student referenda now accounts for almost 10% of the total mandatory student activity fee of $23.25.[25] Indeed, during the period of February, 1991, to January, 1996, OSPIRG received $262,598 from its special assessment at Lane Community College.[26]

OSPIRG uses its special assessment to engage in its own unique political and ideological speech and activities. OSPIRG is an advocacy group actively engaged in promoting the social and political changes it believes are necessary. For example, OSPIRG began a grassroots lobbying campaign by soliciting postcards urging United States Representative Peter DeFazio to

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[20] App. E-4, Findings and Recommendation.

[21] *Id.*

[22] *Id.*

[23] App. G-2, Second Affidavit of Barbara Delansky.

[24] App. E-4.

[25] App. E-4.

[26] App. E-7, Findings and Recommendation.

support the Clean Water Enforcement and Compliance Improvement Amendment Act of 1991.[27] OSPIRG directed its energy toward blocking corporate sponsorship of events occurring during the 25th anniversary of Earth Day.[28] OSPIRG also informed Congress that students would not support the Republican Party's "Contract with America."[29]

B. The District Court Decision

The district court decided this case on cross motions for summary judgment. The court recognized the burden on the students' First Amendment rights:

> Students cannot pay the ASLCC student activity fee without a portion being allocated by LCC to OSPIRG, and individuals cannot participate as students at LCC without paying the full fee, except under certain conditions.[30]

The district court applied intermediate scrutiny to find that OSPIRG furthered the College's "substantial interest in education." Thus, the court held that the College could compel Petitioners to fund all of OSPIRG's activities.[31]

C. The Ninth Circuit Decision

On March 24, 1999, the Ninth Circuit issued its decision affirming the judgment of the lower court. In the course of that opinion, the court recognized that a majority vote of the student

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[27] App. E-6.

[28] App. F-36, Declaration of Mark T. Gallagher in Support of Plaintiffs' Motion for Summary Judgment.

[29] App. E-6, Findings and Recommendation.

[30] App. E-3.

[31] App. E-12-13.

body determines funding allocations at the College.[32] However, the court concluded that because the College articulated substantial government interests supporting the mandatory funding scheme, and because the funding scheme was germane to the College's mission within the meaning of *Keller v. State Bar of California*, 496 U.S. 1, 13 (1990), the College's scheme complied with the requirements of the First Amendment. App. A at 5.

As the parties litigated this case in the Ninth Circuit, the Seventh Circuit Court of Appeals also considered the issue of whether a college may use mandatory student fees to fund the political and ideological speech of student groups. *Southworth v. Grebe* (*Southworth I*), 151 F.3d 717, *reh'g denied*, 157 F.3d 1124 (7th Cir. 1998), *rev'd sub nom. Board of Regents of the University of Wisconsin System v. Southworth* (*Southworth II*), 529 U.S. 217, 120 S. Ct. 1346 (2000), involved a challenge to the University of Wisconsin's funding of various political groups, including the Wisconsin Student Public Interest Research Group (WISPIRG). The Seventh Circuit concluded that even if the funding of private political and ideological organizations is germane to the university's mission, the corresponding burden on students' free speech rights outweighed the governmental benefit. As a result, that court concluded that the university could not use mandatory student fees to fund the political and ideological activities, speech, and advocacy of groups such as WISPIRG. *Southworth I*, 151 F.3d at 732-33.

On March 29, 1999, this Court granted a petition for writ of certiorari in *Southworth I*. On April 5, 1999, Petitioners in this case filed a Petition for Rehearing and Suggestion for Rehearing *En Banc* pending the resolution of *Southworth II*. On March 22, 2000, this Court issued its opinion in *Southworth*

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[32] App. A-4, Memorandum.

II, holding that "the principal standard of protection for objecting students . . . is the requirement of viewpoint neutrality in the allocation of funding support." *Southworth II*, 120 S. Ct. at 1356. The Ninth Circuit then directed each party to this action to file a supplemental brief regarding the correct disposition of this case upon further consideration in light of *Southworth II*. After reviewing this Court's ruling in *Southworth II*, the Ninth Circuit concluded that, since the students did not establish that any referendum seeking funding for a political or ideological student group had ever failed, the referendum process at the College protected viewpoint neutrality.[33] Based on this determination, the Ninth Circuit denied the Petition for Rehearing and Suggestion for Rehearing *En Banc* on August 18, 2000. This Petition for Writ of Certiorari follows.

REASONS FOR GRANTING THE WRIT

I

THIS COURT SHOULD GRANT THE WRIT OF CERTIORARI TO RESOLVE SIGNIFICANT CONFLICT AND CONFUSION AMONG THE CIRCUITS

The Ninth Circuit expressly recognized that the fee allocation at the College is made by vote of the student body. *See* App. A-4. Yet, the Ninth Circuit upheld the College's funding procedure because the scheme was "germane" to the College's substantial governmental interests in education. App.

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[33] *See* App. B, Order Denying Petition for Rehearing and Rejecting Suggestion for Rehearing *En Banc* ("[W]e conclude that remand is not required to determine whether the referendum process at Lane Community College protected viewpoint neutrality because it is undisputed that no request was ever denied."). App. B-2 .

A-5. Moreover, the Ninth Circuit went so far as to create a new ripeness requirement for First Amendment claims which requires students to subject their speech to majority approval before bringing a legal challenge to the funding process.[34] In so holding, the Ninth Circuit stands in conflict with decisions of both the Seventh and Third Circuit Courts of Appeals.

A. The Order of the Ninth Circuit Refusing to Remand the Referendum Issue Conflicts with a Recent Remand of the Same Issue by the Seventh Circuit Court of Appeals and with an Opinion of the Third Circuit Court of Appeals

Applying this Court's viewpoint neutrality standard announced in *Southworth II*, the Seventh Circuit noted that a referendum method of distributing student activities fees likely violates the First Amendment rights of students. *Southworth v. Board of Regents of University of Wisconsin System* (*Southworth III*), Nos. 97-3510 and 97-3548, 2000 U.S. App. LEXIS 15470, at *8 (7th Cir. June 23, 2000). Because the record was not clear on the referendum process in that case, the Seventh Circuit remanded the issue to the district court for further development and examination. *Id.* at *9. The Ninth Circuit departed from the Seventh Circuit in this case by utilizing the "germaneness" test that this Court held was unworkable when applied to compelled student fees. Thus, the Ninth Circuit's opinion in this case conflicts with the opinion of the Seventh Circuit applying the proper viewpoint neutrality standard.

Rather than rely upon viewpoint neutrality as a guiding principle, the Ninth Circuit applied a test that considered whether substantial interests supported the College's funding scheme and whether the funding was "germane" to the

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[34] *Id.*

College's substantial interests.[35] App. A at 5. However, upon remand from this Court, the Seventh Circuit stated in *Southworth III*, "the Supreme Court made clear that to properly protect a student's First Amendment rights, the mandatory student activity fees must be allocated on a viewpoint-neutral basis." *Southworth III*, 2000 U.S. App. LEXIS 15470, at *6. Thus, the Ninth Circuit failed to apply the appropriate test.

The Seventh Circuit on remand properly directed the district court to consider the following pertinent principles regarding the First Amendment and the referendum process. First, "[v]iewpoint neutrality requires that no viewpoint be preferred, and that no one viewpoint is disadvantaged relative to other viewpoints." *Id.* (quoting *Grossbaum v. Indianapolis-Marion County Building Authority*, 100 F.3d 1287, 1298 (7th Cir. 1996)). Second,

> in determining who has access to the public forum--in this case the forum of money--those allocating the funds cannot "pick and choose among similarly situated speakers in order to advance or suppress a particular ideology or outlook."

Id. at *7 (quoting *Berner v. Delahanty*, 129 F.3d 20, 28 (1st Cir. 1997)).

In formulating the appropriate test for compelled student fee cases, this Court stated:

> In *Abood* and *Keller* the constitutional rule took the form of limiting the required subsidy to speech

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[35] The Ninth Circuit relied in part upon decisions of this Court in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), and *Keller v. State Bar of California*, 496 U.S. 1. However, this Court has held that the means of implementing First Amendment protections adopted in those decisions are neither applicable nor workable in the context of student speech at a university. *Southworth II*, 120 S. Ct. at 1354.

> germane to the purposes of the union or bar association. The standard of germane speech as applied to student speech at a university is unworkable, however, and gives insufficient protection both to the objecting students and to the University program itself.

Southworth II, 120 S. Ct. at 1355. This Court concluded "that the University of Wisconsin may sustain the extracurricular dimensions of its programs by using mandatory student fees with viewpoint neutrality as the operational principle." *Id.* at 1356. The decision of the Seventh Circuit in *Southworth III* correctly relied upon the viewpoint neutrality test and directed the district court to apply the test upon remand. The Ninth Circuit's decision conflicts with the proper Seventh Circuit decision by incorrectly applying the rule of *Abood* and *Keller*.

Moreover, the Ninth Circuit's order refusing remand also contradicts the Third Circuit Court of Appeals' opinion in *Galda v. Rutgers*, 772 F.2d 1060 (3d Cir. 1985). In *Galda*, the Third Circuit concluded that the funding of the New Jersey Public Interest Research Group (NJPIRG), which involved a student referendum, violated viewpoint neutrality. *Id.* at 1067 ("In that situation a university's ability to insure a balance in access is infringed, if not prevented. . . ."). Accordingly, in contrast to the Ninth Circuit, the Third Circuit vacated the lower court's opinion and remanded the case to the district court for entry of an order enjoining the assessment of mandatory fees payable to the NJPIRG. *Id.* at 1068.

B. The Ninth Circuit's New Ripeness Requirement in This Case Also Significantly Conflicts with the Seventh and Third Circuit Courts of Appeals

The Ninth Circuit's decision conflicts with the Seventh Circuit and Third Circuit by applying the wrong test. Conflict also exists in that the Ninth Circuit created a new ripeness requirement for First Amendment claims involving compelled

student fees. The Ninth Circuit refused to remand the case and allow the district court to apply the correct viewpoint neutrality test because "it is undisputed that no request [for funding] was ever denied." App. B-2, Order. No such ripeness requirement exists in this Court's jurisprudence.

This Court has stated:

> Viewpoint neutrality is the justification for requiring the student to pay the fee in the first instance and for ensuring the integrity of the program's operation once the funds have been collected.

Southworth II, 120 S. Ct. at 1356. A "majority rules" funding process in itself inherently violates viewpoint neutrality because:

> [B]y voting–here via a referendum–the students appear to make funding decisions based on the speech of the various student groups; their votes for funding will advance certain viewpoints, while their votes against funding will suppress others.

Southworth III, 2000 U.S. App. LEXIS 15470, at *8-*9. Indeed,

> Generally, when an activity fund comes into existence, all student groups on campus are free to compete for a fair share. That is not the situation here where the mandated contribution is earmarked for only one organization, an organization which has no obligation to use any part of the fund for the benefit of a group which pursues a different philosophy.

Galda, 772 F.2d at 1067. The Ninth Circuit seems to conclude, as did Rutgers University in *Galda*, that the funding process is open to all groups and students may not complain about

viewpoint discrimination until a group has been denied funding. *See Galda*, 772 F.2d at 1067. However,

> [I]t is no answer to say that opponents may utilize the "neutral funding" policy to support a vehicle of their own. For example, the opponents may be small in number . . . and unable to attract the necessary student support. No extended discussion is required to explain the basic concept that the First Amendment protects the views of a minority as well as those of the majority.

Id.

Thus, the Ninth Circuit's new ripeness requirement announced in this case conflicts with previous decisions of the Third and Seventh Circuits. Accordingly, Petitioners respectfully urge this Court to grant their writ of certiorari in order to eliminate the confusion in the Ninth Circuit regarding the question of whether viewpoint neutrality is violated by the funding of student groups based upon majority determination.

II

THIS COURT SHOULD GRANT REVIEW BECAUSE THE NINTH CIRCUIT DECISION REGARDING AN IMPORTANT FEDERAL QUESTION CONFLICTS WITH A RELEVANT DECISION OF THIS COURT

This case raises an important question of fundamental rights involving majority determinations made by a student referendum in which an individual student group receives compelled funding through the use of mandatory student fees. The issue in this case concerns mandatory student fees imposed by viewpoint discriminatory student referenda that the College allocates to student political and ideological groups.

This Court has recognized that the use of mandatory student fees to fund the political and ideological speech of

student groups infringes on the speech and beliefs of individual students who object to the political and ideological aims of those groups. *Southworth II*, 120 S. Ct. at 1355. Given this infringement, this Court has concluded that students may insist upon certain safeguards with respect to such use of their mandatory student fees. According to this Court, a viewpoint neutral allocation of funding support to various student groups provides the principal protection of the First Amendment rights of students. *Id.* at 1356. More specifically, this Court also strongly suggested that the use of student referenda to determine which groups receive mandatory student fees violates the principle of viewpoint neutrality.

> To the extent the referendum substitutes majority determinations for viewpoint neutrality it would undermine the constitutional protection the program requires. The whole theory of viewpoint neutrality is that minority views are treated with the same respect as are majority views. Access to a public forum, for instance, does not depend upon majoritarian consent. That principle is controlling here.

Id. at 1357.

The College's decision to use student referenda to determine which groups receive mandatory student fees substitutes majority determinations for the First Amendment principle of viewpoint neutrality. Accordingly, this Court should review the decision of the Ninth Circuit which upholds the College's funding process.

A. The College's Use of Student Referenda to Allocate Fees to Political and Ideological Student Organizations Is Not Consistent with the Principle of Viewpoint Neutrality Announced by This Court in *Southworth II*

In *Keller v. State Bar of California*, 496 U.S. 1, this Court explained that "compelled . . . contributions for political purposes works no less an infringement of . . . constitutional rights" than prohibitions on making contributions to organizations for political purposes. 496 U.S. at 10 (quoting *Abood v. Detroit Board of Education*, 431 U.S. at 234). This Court's opinion in *Southworth II* makes clear that these same First Amendment rights are implicated when a public college uses compelled student fees to fund political and ideological groups on campus.

> If the University conditions the opportunity to receive a college education, an opportunity comparable in importance to joining a labor union or bar association, on an agreement to support objectionable, extracurricular expression by other students, the rights acknowledged in *Abood* and *Keller* become implicated.

Southworth II, 120 S. Ct. at 1355. The students in *Southworth*, like the union members in *Abood* and state bar members in *Keller*, were forced to fund political and ideological speech which they found abhorrent. "We must begin by recognizing that the complaining students are being required to pay fees which are subsidies for speech they find objectionable, even offensive." *Id.* at 1354.

Given the importance of the First Amendment rights at stake, certain safeguards must protect students before a college can compel them to fund political and ideological speech with which they disagree. "We conclude the objecting students may insist upon certain safeguards with respect to the expressive

activities which they are required to support." *Id.* Specifically, this Court held that a public college could only use mandatory student activity fees to fund political and ideological groups if the college allocated the funds in a viewpoint neutral manner.

> The University must provide some protection to its students' First Amendment interests, however. The proper measure, and the principal standard of protection for objecting students, we conclude, is the requirement of viewpoint neutrality in the allocation of funding support. . . . We conclude that the University of Wisconsin may sustain the extracurricular dimensions of its programs by using mandatory student fees with viewpoint neutrality as the operational principle.

Id. at 1356.[36]

In *Southworth II*, this Court repeatedly noted that student referenda, whereby funding for student groups depends solely on majority determinations, was inconsistent with the principle of viewpoint neutrality. "The student referendum aspect of the program for funding speech and expressive activities, however, appears to be inconsistent with the viewpoint neutrality requirement." *Id.* at 1354. In addition, "[w]e do not sustain, however, the student referendum mechanism of the University's program, which appears to permit the exaction of fees in violation of the viewpoint neutrality principle." *Id.* at 1350. Moreover,

> It remains to discuss the referendum aspect of the University's program. While the record is not well developed on the point, it appears that by majority

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[36] Justice Souter, joined by Justice Stevens and Justice Breyer, concurred in the judgment. Justice Souter characterized the standard imposed by the majority on the university as a "cast-iron viewpoint neutrality requirement." *Southworth II*, 120 S. Ct. at 1357.

> vote of the student body a given RSO [Registered Student Organization] may be funded or defunded. It is unclear to us what protection, if any, there is for viewpoint neutrality in this part of the process. To the extent the referendum substitutes majority determinations for viewpoint neutrality it would undermine the constitutional protection the program requires. The whole theory of viewpoint neutrality is that minority views are treated with the same respect as are majority views. Access to a public forum, for instance, does not depend upon majoritarian consent. That principle is controlling here.

Id. at 1357.

Although this Court remanded *Southworth II* because the record with respect to the student referendum was not well developed, *Southworth II* makes clear that the use of a referenda process to base funding decisions solely on majoritarian determinations violates the guiding principle of viewpoint neutrality. In fact, this method of making funding decisions conflicts with "[t]he whole theory of viewpoint neutrality," which ensures that "minority views are treated with the same respect as are majority views." *Id.* Because the decision to fund the political and ideological advocacy of OSPIRG is made via student referendum, a referendum that explicitly considers the political and ideological activities of OSPIRG, the College's funding scheme violates the principle of viewpoint neutrality.

B. The Funding Decision in This Case Was Made by a Student Referendum Suggested as Likely Unconstitutional by This Court in *Southworth II*

In this case, the record makes *clear* that the College ultimately provides compelled funding to OSPIRG only upon approval by a student referendum of the fee and OSPIRG's

political and ideological activities. As the district court below explained:

> The student fee becomes mandatory only after it is voted on and approved by the LCC student body. On June 13, 1990, the Board approved an increase in the activity fee from $5.00 per student per term to $7.00 per student per term, designating the additional $2.00 to fund OSPIRG at LCC. The LCC student body holds a periodic campus-wide referendum on the activity fee paid by students. Prior to each of the three votes which have been held on the issue, in 1990, 1993, and 1996, there was publication of OSPIRG's activities on the campus, and there was debate among the students regarding funding of OSPIRG.[37]

Thus, in 1990, the student body at the College made the initial decision to finance OSPIRG by a student referendum. Students voted to increase mandatory student fees with the additional amount going ***solely*** to OSPIRG, a single political and ideological group representing a single political and ideological point of view, after debating OSPIRG's political and ideological activities. As a result of the 1990 election, the College increased the mandatory student activity fee by $2.00 for the ***sole*** purpose of funding one, and only one, political and ideological group—OSPIRG. Thereafter, the College, through subsequent student body votes, continued using mandatory fees to fund the political and ideological speech and activities of OSPIRG, and also approved an increase in the funding of OSPIRG by student vote.

By contrast, other student groups receive their funds from a general $5 fee for cultural activities and other expenses. In contrast to other student groups, only OSPIRG is listed as a

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[37] App. E-4, Findings and Recommendation.

separately funded service.[38] Thus, while other groups must compete for a portion of the cultural activities fee, OSPIRG stands alone in receiving the whole of its own segregated portion by special assessment.

The College's use of student referenda to determine which groups receive mandatory fees suffers from the same constitutional defects identified by this Court in *Southworth II*.[39] Using the College's scheme, access to the public forum depends entirely upon the consent of the student majority. Under this structure, the danger exists that students do not treat minority views with the same respect and, perhaps more importantly, with the same financial support as majority views. As noted by the Third Circuit:

> One of the arguments used to justify allocation of activities fees to speakers or campus organizations that present controversial views is the educational necessity of exposing the university community to a diversity of responsible opinion. In fulfilling its role, it is expected that a university will strive for

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[38] App. F-63, Declaration of Mark T. Gallagher in Support of Plaintiffs' Motion for Summary Judgment.

[39] In *Southworth*, the student referendum allowed a majority of students to compel funding of the Wisconsin Student Public Interest Research Group. The money flowed to the university, which then handed the money directly over to WISPIRG. *Southworth II*, 120 S. Ct. at 1351-52. Moreover, *Southworth* demonstrates the danger inherent in the student referenda process in that the Wisconsin students also voted to defund a student organization. *Id.* at 1351. That process has been invoked by students at other Oregon schools. Students voted to discontinue funding of OSPIRG at Portland State University. App. H-3, Second Affidavit of Maureen Kirk.

> balance and afford adequate opportunity for offering opposing viewpoints.

Galda, 772 F.2d at 1067.

Because the College makes its funding decisions by the referendum process, the College does not allocate fees among student groups in a viewpoint neutral manner and thereby violates the constitutional rights of its students. "When a university requires its students to pay fees to support the extracurricular speech of other students . . . it may not prefer some viewpoints to others." *Southworth II*, 120 S. Ct. at 1356. Thus, this case is identical to *Southworth II* in that "[t]he student referendum aspect of the program for funding speech and expressive activities . . . appears to be inconsistent with the viewpoint neutrality requirement." *Id.* at 1354.

C. The College's Use of Student Referenda to Determine Funding for OSPIRG Is Unconstitutional Because It Is Not Viewpoint Neutral

In 1990, students voted to increase the student activity fee by $2.00, devoting the additional funds ***solely*** to OSPIRG.[40] This initial increase, and the subsequent increases, amounted to $262,598 in funding from 1990 to 1996.[41] The money flows from the students' hands to OSPIRG's account and is not available to any other on-campus group. Hence, the College favors OSPIRG, and the unique political and ideological viewpoint it espouses, to the exclusion of other on-campus groups which may identify with different political and ideological viewpoints.

It is simply undeniable that OSPIRG uses the compelled student fees to engage in its own unique political and

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[40] App. E-4, Findings and Recommendation.

[41] App. E-7.

ideological speech and activities. OSPIRG is an advocacy group actively engaged in promoting and lobbying for the social and political changes it feels are necessary.

More specifically, OSPIRG began a grassroots lobbying campaign by soliciting postcards urging United States Representative Peter DeFazio to support the Clean Water Enforcement and Compliance Improvement Amendment Act of 1991.[42] OSPIRG has directed its energy toward blocking corporate sponsorship of events occurring during the 25th anniversary of Earth Day.[43] OSPIRG also informed Congress that students would not support the Republican Party's "Contract with America."[44]

Thus, here, as in *Galda*,

> Generally, when an activity fund comes into existence, all student groups on campus are free to compete for a fair share. That is not the situation here where the mandated contribution is earmarked for only one organization, an organization which has no obligation to use any part of the fund for the benefit of a group which pursues a different philosophy.

Galda, 772 F.2d at 1067.[45]

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[42] App. E-6.

[43] App. F-36, Declaration of Mark T. Gallagher in Support of Plaintiffs' Motion for Summary Judgment.

[44] App. E-6, Findings and Recommendation.

[45] Similar to OSPIRG in this case, the New Jersey Public Interest Research Group in *Galda* obtained funding through mandatory student fees allocated by popular vote of the students. *Id.* at 1062.

Indeed, here, as in *Galda*, the College does nothing to ensure that OSPIRG represents anything more than its own political and ideological viewpoint. Although the College funds OSPIRG through the compelled fees of its students, the College does nothing to oversee how the money is spent by OSPIRG. For example, the College does not seek to facilitate the representation of multiple viewpoints by requiring OSPIRG to provide a budget or a description of its projects and activities.[46] Nor does the College require OSPIRG to provide an annual report.[47] Finally, the College does not require OSPIRG to report its activities or the expenditures made in connection with those projects and activities.[48]

In fact, the College simply does not hold OSPIRG accountable for providing anything more than its own political and ideological viewpoint to the students forced to bankroll OSPIRG's advocacy. The College does not require, and OSPIRG does not provide, an explanation of the basis of the special assessment.[49] In sum, the College has given OSPIRG carte blanche, through student majority determination, to spend its special assessment for its own political and ideological purpose to the exclusion of other viewpoints.

The standard set by this Court is not a difficult standard for the College to meet. This Court requires only that the College allocate funding support in a viewpoint neutral manner. *Southworth II*, 120 S. Ct. at 1356. The use of a student referendum adhering to majority determination to approve an increase of student fees of a specific dollar amount and the

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[46] App. E-7 Findings and Recommendation.

[47] *Id.*

[48] *Id.*

[49] App. E-7-8.

funneling of this increase directly to a single political and ideological group such as OSPIRG, which espouses a single viewpoint, completely fails to satisfy this standard.

CONCLUSION

Despite this Court's ruling in *Southworth*, the decision of the Ninth Circuit in this case demonstrates that confusion still reigns in this area of the law. In *Southworth*, this Court struck a balance between the educational interest of a college and the First Amendment rights of students by requiring that any funding of student political and ideological groups be handled in a viewpoint neutral manner. Nonetheless, the court below approved a political and ideological group funding scheme that depends on securing majority approval for the group's point of view. A referendum, by definition, substitutes majority view for viewpoint neutrality and, therefore, does not protect the First Amendment rights of dissenting students. As Petitioners have made clear throughout this litigation, the College made the initial decision to fund OSPIRG, and subsequent decisions to continue funding, via student referenda. These referenda increased mandatory student fees and allocated that special assessment to OSPIRG. Groups with opposing viewpoints can not compete for these funds. Because this process is not viewpoint neutral, it offends the First Amendment. For these reasons this Court should grant Petitioners' Writ of Certiorari and reverse the holding of the Ninth Circuit.

The petition for Writ of Certiorari should be granted.

DATED: November, 2000.

Respectfully submitted,

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APPENDIX

Filed 3/24/99

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM G. HOLLINGSWORTH; LISA R. HOLLINGSWORTH; and JEFFERY D. FERNANDES,	)	No. 97-35451
Plaintiffs-Appellants,	)	D.C. No. CV-95-6321-CO
v.	)	
LANE COMMUNITY COLLEGE; LANE COMMUNITY COLLEGE BOARD OF EDUCATION; JERRY MOSKUS in his official capacity as President of Lane Community College, and LINDA P. FOSSEN in her official capacity as Vice President for Student Services of Lane Community College,	)	MEMORANDUM[1]
Defendants-Appellees.	)	

Appeal from the United States District Court
for the District of Oregon
Michael R. Hogan, District Judge, Presiding

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[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Appendix A–2

Argued and Submitted May 5, 1998
Portland, Oregon

Before: HAWKINS, THOMAS and SILVERMAN, Circuit Judges.

William Hollingsworth, Lisa Hollingsworth, and Jeffery Fernandes (collectively, the "Students"), former students at Lane Community College ("Lane"), appeal the district court's decision denying their motion for summary judgment and granting summary judgment to Lane, the Lane Community College Board of Education ("Board of Education"), and the president and vice-president of Lane, in this action for monetary, declaratory, and injunctive relief under 42 U.S.C. § 1983 for violations of the First and Fourteenth Amendments of the United States Constitution. We review the district court's decision de novo, *see Everson v. United States*, 108 F.3d 234, 236 (9th Cir. 1997), and affirm. Because the parties are familiar with the procedural and factual history of this case, we will not recount it here.

In challenging the distribution of mandatory student fees to the Oregon Student Public Interest Research Group Education Fund ("OSPIRG EF"), this action implicates the same issues raised in *Rounds v. Oregon State Board of Higher Education*, 166 F.3d 1032 (9th Cir. 1999).[2]

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[2] In *Rounds*, we dismissed the University of Oregon and the Oregon State Board of Higher Education from the lawsuit under the Eleventh Amendment. *See* 166 F.3d at 1036. At oral argument, the Students in this case abandoned their claim that the Eleventh Amendment did not apply to Lane and the Board of Education, so we need not address it here. Given our disposition on the merits, we also need not address the potential Eleventh Amendment or qualified immunity of the individual defendants.

Appendix A–3

I.

The district court did not err in declining to apply strict scrutiny to the funding of OSPIRG EF through mandatory fees imposed upon the students at Lane by the Board of Education. As we held in *Rounds*, even if *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), and its progeny are applicable, they do not endorse the application of strict scrutiny. *See Rounds*, 166 F.3d at 1038 n.4; *Abood*, 431 U.S. at 222, 225 (interpreting Supreme Court precedents to hold that interference with First Amendment interests "is constitutionally justified by the legislative assessment of the *important* contribution of the union shop to the system of labor relations established by Congress" and finding that "*important* government interests recognized [in previous cases] presumptively support the impingement upon associational freedom created by the agency shop here at issue") (emphasis added); *Keller v. State Bar*, 496 U.S. 1, 13 (1990) (holding that permissible expenditures of mandatory bar association dues must be "necessarily or reasonably incurred" for purpose justifying compelled association).

Second, *Galda v. Rutgers*, 772 F.2d 1060, 1068 (3d Cir. 1985), which admittedly did require a university to demonstrate a compelling state interest to justify its First Amendment infringement, is inapposite here. The *Galda* court specified that this requirement was triggered only because the plaintiffs had established that the New Jersey Public Interest Research Group ("NJPIRG") functioned "essentially as a political action group with only an incidental educational component." *Id.* at 1065 (citation and internal quotation marks omitted). Such a characterization has doubtful application to OSPIRG EF, which is a separate organization from the more politically oriented Oregon State Public Interest Research Group and instead is oriented towards giving students the chance to adapt their classroom skills to the real world, providing students with

leadership training, educating the campus community on public policy issues, and serving as a non-partisan voice for students on environmental, consumer, and democracy issues. Thus, as in *Rounds*, an intermediate level of scrutiny is appropriate.

II.

The primary difference between the facts of this case and *Rounds* is a difference in the funding mechanism. In *Rounds*, the allocation to OSPIRG EF was made by the Associated Students of the University of Oregon or by a vote of the student body. *See* 166 F.3d at 1039. At Lane, the allocation is made by vote of the student body. The results of the vote are described in the college catalogue, which indicates the portion of the mandatory fee that is allocated to OSPIRG EF as well as the portions allocated to other student organization recipients. The Students argue that this system is akin to the one at issue in *Galda*. However, a closer examination belies this contention. In *Galda*, a mandatory, earmarked, independently assessed fee was paid directly to a non-campus organization, NJPIRG; here, the fee is paid to Lane Community College and appropriated by student vote. Although the results of that vote are described in terms of a per-student fee allocation, the system is much different from the one at issue in *Galda*.

In fact, the fee scheme here most closely resembles the regime the Second Circuit approved in *Carroll v. Blinken*, in which a contract between the New York Public Interest Research Group ("NYPIRG") and the State University of New York at Albany Student Association allocated $3.00 to NYPIRG from each student's general activity fee payment per semester. *See* 957 F.2d 991, 993 (2d Cir. 1992). Thus, the mere fact that an identifiable amount is paid to OSPIRG EF out of the assessed fees does not permit the plaintiffs to invoke the strict scrutiny of *Galda*. *See id.* at 1003 ("In [*Galda*], NJPIRG was financed with a separate assessment, and was not simply an

additional group taking from a larger activity fee as NYPIRG is here.").

Despite the slight differences in funding structure, the *Rounds* analysis applies here with equal force. As in *Rounds* and *Carroll*, the funding statute is content-neutral and aimed at expanding campus speech by funding programs "advantageous to the cultural or physical development of students." *See* Or. Rev. Stat. § 351.070(3)(d) (1997). Lane Community College can articulate substantial governmental interests supporting the mandatory fee scheme: promoting extracurricular activities, teaching specific skills and instilling civic activism, and creating a forum for vigorous debate and free exchange of ideas. The funding of OSPIRG EF is "germane" to those purposes within the meaning of *Keller*, *see* 496 U.S. at 13, and *Abood*, *see* 431 U.S. at 235-36.

We affirm the judgment of the district court.

AFFIRMED.

Filed 8/18/00

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM G. HOLLINGSWORTH; LISA R. HOLLINGSWORTH; and JEFFREY D. FERNANDES, Plaintiffs-Appellants, v. LANE COMMUNITY COLLEGE; LANE COMMUNITY COLLEGE BOARD OF EDUCATION; JERRY MOSKUS in his official capacity as President of Lane Community College; and LINDA P. FOSSEN in her official capacity as Vice President for Student Services of Lane Community College, Defendants-Appellees.	No. 97-35451 D.C. No. 95-6321-CO ORDER

Before: HAWKINS, THOMAS and SILVERMAN, Circuit Judges.

Following issuance of *Board of Regents v. Southworth*, 120 S. Ct. 1346 (2000), we requested supplemental briefing as to the impact of *Southworth*. Having received and reviewed the

briefs, we conclude that remand is not required to determine whether the referendum process at Lane Community College protected viewpoint neutrality because it is undisputed that no request was ever denied. Therefore, because no justiciable issue remains, remand is unnecessary.

The panel has unanimously voted to deny the petition for rehearing and to reject the suggestion for a rehearing en banc. The full court has been advised of the suggestion for en banc rehearing and no judge of the court has requested a vote on the suggestion for rehearing en banc.

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

Appendix C–1

Filed 4/11/97

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

WILLIAM G. HOLLINGSWORTH, et al., Plaintiffs, v. LANE COMMUNITY COLLEGE, et al., Defendants.	Civil No. 95-6321-CO ORDER

Magistrate Judge John P. Cooney filed Findings and Recommendation on February 11, 1997, in the above entitled case. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). When either party objects to any portion of a magistrate judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the magistrate judge's report. *See* 28 U.S.C. § 636(b)(1); *McDonnell Douglas Corp. v. Commodore Business Machines, Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981), *cert. denied*, 455 U.S. 920 (1982).

Plaintiffs have timely filed objections. I have, therefore, given *de novo* review of Magistrate Judge Cooney's rulings.

I find no error. Accordingly, I ADOPT Magistrate Judge Cooney's Findings and Recommendation filed February 11, 1997, in its entirety. Defendants' motion for summary judgment is granted and plaintiffs' motion for summary judgment is denied.

IT IS SO ORDERED.

DATED this 7th day of April, 1997.

/s/ Michael R. Hogan
UNITED STATES DISTRICT JUDGE

Appendix C–3

Filed 4/11/97

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

WILLIAM G. HOLLINGSWORTH, et al., Plaintiffs,	)	Case Number 95-6321 -CO
v.	)	JUDGMENT
LANE COMMUNITY COLLEGE, et al., Defendants.	)	

Based on the record,

IT IS ORDERED AND ADJUDGED that defendants prevail and this action is dismissed.

DATED this 11th day of April, 1997.

DONALD M. CINNAMOND
CLERK, U.S. DISTRICT COURT

/s/ Craig W. Meyer
by Craig W. Meyers, Deputy Clerk

Entered on Docket 4/11/97

Appendix C–4

PUBLIC NOTICE

By Order signed February 4, 1997, Judge Hogan has amended LRll0-2(b) Special Admission - Pro Hac Vice. In all cases filed on or after February 4, 1997 the rule requires submission of an Application for Special Admission - Pro Hac Vice. A $100 admission fee is required when the application is submitted and the amended rule requires proof of liability insurance. Copies of the amendment and application form can be obtained from the Clerk's Office.

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Filed 4/12/00

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM G. HOLLINGSWORTH; LISA R. HOLLINGSWORTH; and JEFFREY D. FERNANDES,	)	No. 97-35451
Plaintiffs-Appellants,	)	D.C. No. 95-6321-CO
v.	)	ORDER
LANE COMMUNITY COLLEGE; LANE COMMUNITY COLLEGE BOARD OF EDUCATION; JERRY MOSKUS in his official capacity as President of Lane Community College; and LINDA P. FOSSEN in her official capacity as Vice President for Student Services of Lane Community College,	)	
Defendants-Appellees.	)	

Before: HAWKINS, THOMAS and SILVERMAN, Circuit Judges.

Each party is directed to file a brief, not to exceed fifteen pages or 7,050 words, by May 5, 2000, on the correct disposition of the case upon further consideration in light of

Appendix D–2

Board of Regents v. Southworth, __ U.S. __, 2000 WL 293217 (March 22, 2000).

Appendix E–1

Filed 2/11/97

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

WILLIAM G. HOLLINGSWORTH; et al Plaintiffs, v. LANE COMMUNITY COLLEGE; et al. Defendants.	)	Civil No. 95-6321-CO FINDINGS AND RECOMMEN-DATION

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Appendix E–2

ATTORNEYS FOR DEFENDANTS

COONEY, Magistrate Judge:

Plaintiff brought this 42 U.S.C. § 1983 action seeking a declaration that their rights of speech and association were and are being violated by defendants' requirement that they pay a mandatory student body fee to fund a student group, Oregon Student Public Interest Research Group (OSPIRG); an injunction directing defendant Lane Community College (LCC) to institute a voluntary system to fund OSPIRG; and damages. This court has jurisdiction pursuant to 28 U.S.C. § 1331. Defendant OSPIRG was dismissed pursuant to stipulation of the parties and order of the court. Before the court are motions for summary judgment filed by plaintiffs and defendants LCC, Jerry Moskus, and Linda Fossen.

I. FACTS

The court makes the following findings of fact:[1]

Plaintiffs are former students of LCC. Plaintiffs Hollingsworth and Fernandes plan to take classes at LCC during the Spring and Summer 1997 terms. LCC is a public community college duly established pursuant to the laws of the State of Oregon. LCC Board of Education (Board) is a local board of education duly established pursuant to the laws of the

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[1] Defendants have filed a motion to strike certain evidence relied upon by plaintiffs. The court is considering all evidence submitted by plaintiffs, with the exception of exhibits 1 and 2 to the complaint which are not authenticated by plaintiffs, *Hal Roach Studios, Inc. v. Richard Feiner and Co.*, 896 F.2d 1542, 1550-51 (9th Cir. 1990); *Canada v. Blain's Helicopters, Inc.*, 831 F.2d 920, 925 (9th Cir.1987). The court grants plaintiffs' request for judicial notice of the newspaper article, Gallagher Decl. Ex. E. The court's position is supported by the evidence objected to by defendants and considered by the court even with its inclusion.

State of Oregon. The Board is responsible for the general supervision and control of LCC. Defendant Moskus is the president of LCC. Defendant Fossen is the vice president for student services at LCC. OSPIRG is a nonprofit, student-directed, student-funded organization with chapters at four college campuses in Oregon, including LCC. OSPIRG is exempt from federal income taxation under the provisions of Internal Revenue Code § 501(c)(3).

Students enrolled in LCC for credit classes or who audit classes, and who are not holding elective office in student government, are required to pay an Associated Students of Lane Community College (ASLCC) student activity fee (activity fee) each term they are so enrolled. The activity fee is the only registration fee at LCC which provides funding for student organizations. Students cannot pay the ASLCC student activity fee without a portion being allocated by LCC and ASLCC to OSPIRG, and individuals cannot participate as students at LCC without paying the full fee, except under certain conditions. OSPIRG does not provide to students at the LCC main campus an explanation of the basis of the fee to be assessed. OSPIRG does not have written procedures available to students at the main campus on how to request a refund or an exemption of any portion of the mandatory student activity fee providing funding support to OSPIRG. OSPIRG does not have written procedures providing for an escrow account to place the funds received from objecting students. There are no written policies of the Board allowing students refunds or exemptions to the payment of the fee including the OSPIRG fee. The activity fee is refundable if a student withdraws from all credit classes or if the credit classes for which a student is enrolled are dropped by LCC. To object to a specific use of the student activity fee, students may discuss any objections to the use of the student fees with an ASLCC officer, the Director of Student Activities, the Vice President for Student Services, and the President. Students may also work with ombudspersons on campus to try

to resolve any objections to the use of student fees. Alternatively, the students may initiate a referendum to eliminate any portion of the fee they no longer feel is necessary. Students may also file a complaint through the grievance procedure, address the Board during public comment period, or write letters to the editor of the school newspaper, Torch. The Director of Student Activities may waive the activity fee if a student is auditing only one credit class.

LCC is authorized to set tuition and fees for students pursuant to ORS 341.290(7)(8). Board policy requires it to approve in advance all proposed changes to student fees including student initiated programs. The student fee becomes mandatory only after it is voted on and approved by the LCC student body. On June 13, 1990, the Board approved an increase in the activity fee from $5.00 per student per term to $7.00 per student per term, designating the additional $2.00 to fund OSPIRG at LCC. The LCC student body holds a periodic campus-wide referendum on the activity fee paid by students. Prior to each of the three votes which have been held on the issue, in 1990, 1993, and 1996, there was publication of OSPIRG's activities on the campus, and there was debate among the students regarding funding of OSPIRG. Plaintiffs paid the mandatory ASLCC student activity fee each term, of which $2.00 was directed to fund OSPIRG. In 1996 at ASLCC elections, the OSPIRG mandatory fee was increased from $2.00 to $2.25 per student. The activity fee appeared as a nonitemized amount on student registration forms and in the LCC catalogue prior to Winter 1995. For Winter 1995, LCC itemized the activity fee and indicates that $2.00 of the activity fee goes to OSPIRG. The support of the OSPIRG chapter at LCC by means of mandatory student fees continues at the present time.

LCC in its ordinary operations offers its students educational opportunities and experiences to its students

regarding civic participation, communication, and debate. LCC promotes student education through extracurricular activities. LCC sponsors extracurricular activities like student groups by funding various student organizations, in whole or in part, with funds from the student activity fee. Besides funding OSPIRG, other student groups supported by funds from the activity fee include the Native American Student Association, the Black Student Union Club, the Lane Computer Society, Students of Multicultural Ethnicity, the Nursing Club & Alumni Association, the Lane Writers Club, the Latino Club, and the Islamic Club.

OSPIRG promotes policies that preserve the environment, protect consumers, and encourage citizens to be involved in public issues. The Articles of Incorporation of OSPIRG state that the purposes for which it was organized are:

> 1. to engage in no[n]-partisan analysis, study or research of such issues of general public interest as environmental preservation and consumer protection;
>
> 2. to make available to the public a full and fair exposition of the pertinent facts and results of non-partisan analysis, study and research so that citizens may form independent conclusions beneficial to the community.

Student fee moneys have enabled OSPIRG to hire professional organizers and researchers to help students find effective solutions to problems facing society. OSPIRG does not regularly employ or contract lobbyists to promote or advocate any of its activities. OSPIRG hired a lobbyist in 1995 to oppose an amendment to a bill in the Oregon House of Representatives which would have eliminated the ability of student governments to fund student groups, such as OSPIRG. This is the only time the present Executive Director of OSPIRG knows that OSPIRG has used a lobbyist. OSPIRG has not employed or contracted with lobbyists to promote or advocate

any of its substantive issues. OSPIRG does not engage in door-to-door fund raising activities or participate in a fuel oil or any other cooperative, nor does it incur administrative costs associated with such programs.

OSPIRG works with students at LCC on a variety of public interest issues ranging from research and writing projects, educational forums and presentations, debates, publication of newsletters, fact sheets, and other materials, internship and community service projects in the areas of environmental education, consumer protection, good government, renters' rights, recycling, transportation, energy policy, hunger and homelessness relief, clean air, clean water, child care, toxins, pesticides, and stream walks. OSPIRG has worked to educate students about the need to protect endangered species and improve air quality. Other activities and programs include a local banking practices survey, a renter's rights handbook, guides to recycling, a guide to toy safety, a campus cleanup, a cleanup of Armitage Park, helping to feed and find shelter for the homeless, a "streamwalk" cleanup of the McKenzie River, and a cleanup of a teenage shelter. OSPIRG urged students to write postcards requesting local Congressman DeFazio to support the passage of the 1991 Clean Water Act Amendments. OSPIRG urged students to inform Congress that they would not support the erosion of environmental standards in the "Contract with America." OSPIRG also provides opportunities for students to participate as interns earning academic credit through which the interns develop essential skills such as effective communication, organizational techniques, and research and problem solving. OSPIRG sponsors from five to ten student interns each term and, in the six years that OSPIRG has existed at the college, approximately 150 students have taken advantage of the opportunity to work as interns at OSPIRG. In addition to these students, approximately 200-300 students have participated in various OSPIRG projects as volunteers. Many of the projects

and activities of the LCC chapter of OSPIRG take place off the immediate grounds of LCC's main campus, including in the surrounding community and on other campuses in Oregon. OSPIRG is the largest and most active student organization at LCC.

Plaintiffs oppose OSPIRG's objectives and disagree with its ideology. Plaintiffs have not participated in OSPIRG in any manner.

OSPIRG receives funds from LCC after moneys from the activity fee are deposited in the ASLCC Mandatory Fee account and disbursed by LCC's finance department. OSPIRG does not segregate revenue received into separate accounts. No OSPIRG money is commingled with the Oregon State Public Interest Research Group Citizen's Lobby, Inc. (Citizen's Lobby), which is an organization separate from OSPIRG. No OSPIRG money is used to support or pay for activities of Citizens Lobby or any other organization. OSPIRG does not track expenditures specific to project and activity. A portion of the moneys received from the student activity fee is expended to cover the costs of OSPIRG's administrative staff. All "statewide administrative expenses" incurred by OSPIRG relate directly to activities and operations of OSPIRG, including the chapter at LCC. LCC does not require OSPIRG to spend as much at LCC's main campus as it receives in funding support from the mandatory ASLCC student activity fee. Between 1990 and 1996, OSPIRG collected $262,598 from LCC students.

OSPIRG is not required by LCC to provide a report describing its projects and activities or an annual budget for review. The Board does not have written policies or procedures requiring OSPIRG to submit an annual budget for review. The president of LCC does not review an annual report or other reporting mechanism submitted by OSPIRG setting forth OSPIRG's projects and activities at LCC's main campus, and the expenditures of OSPIRG in connection with those projects

and activities. The president of LCC does not review and approve OSPIRG's annual budget. The president of LCC does not review documents to ensure that OSPIRG spends as much at Lane's main campus as it receives as funding support from the mandatory student activity fee at LCC's main campus. LCC relies on upon certain factors to ensure that activity fee monies used to fund OSPIRG are used only for educational purposes: OSPIRG's status as a § 501(c)(3) corporation as defined by the Internal Revenue Code; annual meetings where LCC administrators and staff and OSPIRG representatives discuss OSPIRG's proposed goals and activities for the coming year; periodic meetings between LCC Director of Student Activities and the faculty advisor for OSPIRG; and monitoring of OSPIRG's activities by its faculty advisor.

II. LEGAL STANDARDS

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, a moving party is entitled to summary judgment as a matter of law "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact." Fed. R. Civ. P. 56(c); *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir.), *cert. denied*, 502 U.S. 994 (1991). The moving party must carry the initial burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24 (1986). The moving party meets this burden by identifying for the court portions of the record on file which demonstrate the absence of any genuine issue of material fact. *Celotex Corp.*, 477 U.S. at 322-24; *Bhan*, 929 F.2d at 1409. In assessing whether a party has met its burden, the court must view the evidence in the light most favorable to the non-moving party. *Allen v. City of Los Angeles*, 66 F.3d 1052 (9th Cir. 1995). All reasonable doubts must be resolved in the non-movant's favor. *Intel Corp. v. Hartford Accident and Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991).

If the moving party meets its burden with a properly supported motion, the burden then shifts to the opposing party to present specific facts which show there is a genuine issue for trial. Fed. R. Civ. P. 56(e); *Intel Corp.*, 952 F.2d at 1558; *Auvil v. CBS "60 Minutes"*, 67 F.3d 816 (9th Cir. 1995), *cert. denied*, _ U.S. __, 116 S. Ct. 1567 (1996); *see Anderson v. Liberty Lobby. Inc.*, 477 U.S. 242, 250 & n.4 (1986). If the moving party presents evidence which, taken by itself, would establish the right to a directed verdict at trial, the motion for summary judgment must be granted, in the absence of any significant probative evidence tending to support the opposing party's theory of the case. *THI-Hawaii, Inc. v. First Commerce Fin. Corp.*, 627 F.2d 991, 993-94 (9th Cir. 1980); *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S. 253, 290, *reh'g denied*, 393 U.S. 901 (1968). Conclusory allegations, unsupported by factual material, are insufficient to defeat a motion for summary judgment. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposing party must, by affidavit or as otherwise provided by Rule 56, designate specific facts which show there is a genuine issue for trial. *Leonard v. Clark*, 12 F.3d 885, 888 (9th Cir. 1994).

III. DISCUSSION

Plaintiffs argue that LCC may not force them by way of a mandatory student activity fee to support OSPIRG's political and ideological speech, to which they object. They claim that OSPIRG's on campus and off campus activities and the exaction of a mandatory fee violates their First Amendment rights of speech and association. They claim that LCC cannot show a compelling interest which justifies overriding their First Amendment rights, and assert that LCC can achieve its goals through less restrictive means by instituting a voluntary program to fund OSPIRG. Defendants argue that they are constitutionally permitted to fund student organizations with mandatory student fees because such use of funds is germane to

LCC's educational goal. They contend that they cannot refuse to fund ideological student groups on the basis of the group's ideology. Defendants assert that plaintiffs have not sustained their burden of showing that any student fee monies transferred to OSPIRG were used to support or promote political or ideological speech or, if there was, that such speech was not germane to its broad educational mission. Plaintiffs concede defendants' argument that the individual defendants cannot be held liable for damages, since they are sued in their official capacity only.

It is clear that a college or university may compel student funding of student programs--where the funding is germane to carrying out the goals of the funding organization. *Carroll v. Blinken*, 957 F.2d 991, 996-999, 1002 (2d Cir.), *cert. denied*, 506 U.S. 906 (1992) (*Carroll I*); *Carroll v. Blinken*, 42 F.3d 122, 125 (2d Cir. 1994) (*Carroll II*); *Kania v. Fordham*, 702 F.2d 475, 479-80 & n.8 (4th Cir. 1983); *Hays County Guardian v. Supple*, 969 F.2d 111,123-24 (5th Cir. 1992), *cert. denied*, 506 U.S. 1087 (1993); (*see Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 235-36, *reh'g denied*, 433 U.S. 915 (1977); *Keller v. State Bar*, 496 U.S. 1, 14-17 (1990).

In *Carroll I* and *Carroll II*, the Second Circuit court found that the interests of the university in "the promotion of extracurricular life, the transmission of skills and civic duty, and the stimulation of energetic campus debate" together were substantial enough interests to justify any infringement of dissenting students' First Amendment right against compelled speech, and that these interests would be served less effectively absent the mandatory activity fee, a part of which was allocated to an ideological group, the student New York Public Interest Research Group (NYPIRG). The court held that the university's interest in providing educational opportunities did not end at the campus gate and that NYPIRG's activities could take place off campus as long as the educational nexus existed.

However, the Third Circuit in *Galda v. Bloustein*, 686 F.2d 159 (3d Cir. 1982) (*Galda I*) and *Galda v. Rutgers*, 772 F.2d 1060 (3d Cir. 1985), *cert. denied*, 475 U.S. 1065 (1986) (*Galda II*), held that the university there did not show any compelling state interest which would justify overriding students' First Amendment rights, and the university could not compel payment of a student fee to fund a political and ideological group, the New Jersey Public Interest Research Group (NJPIRG).[2]

Pursuant to ORS 341.290(8), the Board may, "Prescribe and collect fees and expend funds so raised for special programs and services for the students and for programs for the cultural and physical development of the students." Defendants offer evidence that by funding a variety of extracurricular activities such as student organizations, including OSPIRG, they advance LCC's educational purpose by creating a forum for civic participation, communication, and debate. The Director of Student Activities at LCC states that the student government is "designed to reflect local, state and federal governments for the purpose of fostering student familiarity with governmental procedures and to encourage involvement in life on campus and off." (Delansky Aff. at 3.) The students at LCC have ratified the funding of OSPIRG each of the three times the issue has been presented for vote. OSPIRG works with students on a variety of public interest issues through such activities as research and writing projects, and educational forums, presentations, and debates. It publishes newsletters, fact sheets, and other materials. OSPIRG offers internships to LCC students for academic credit and provides opportunities

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[2] The parties represent to the court that they do not believe any distinction can be made as to the fact that the fee at issue in *Galda* was a mandatory fee specifically earmarked for NJPIRG apart from the compulsory student activity fee which funded a variety of student groups.

for students to participate as volunteers in various projects. Although plaintiffs assert in their memoranda that OSPIRG is involved in legislative lobbying, the admissible evidence before the court shows that, with the exception of one instance,[3] OSPIRG does not engage in lobbying on substantive issues. OSPIRG does not engage in door-to-door fund raising or participate in a fuel oil cooperative or other cooperative. *Cf. Galda I*, 686 F.2d at 161; *see Rounds v. Oregon State Bd. of Higher Educ.*, Civil No. 95-6132-TC, Findings and Recommendation (D. Or. Oct. 3, 1996), *adopted*, Order (D. Or. Dec. 12, 1996).[4]

The court finds that the activities of OSPIRG as shown in the admissible materials before the court furthers defendants' substantial interest in education. A university's determination that an organization is an appropriate participant in the university forum which advances its educational mission is entitled to "considerable deference." *Galda I*, 686 F.2d at 166; *Carroll I*, 957 F.2d at 999. The *Galda I* court found that to overcome the "presumptive validity" of the university's judgment that an organization contributes to the university community, students objecting to paying a fee to the organization must demonstrate that the organization functions "essentially as a political action group with only an incidental educational component." *Galda I*, 686 F.2d at 166.

Plaintiffs do not show that OSPIRG's projects or expenditures lack a nexus to defendants' educational goals. They argue that defendants' off campus activities violate their rights. It is clear that off campus activities and expenditures

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[3] In 1995, OSPIRG hired a lobbyist to oppose legislation in the state legislature which would have eliminated funding of student groups such as OSPIRG.

[4] OSPIRG is the same student group which was challenged in *Rounds*. (Second Kirk Aff. at 6.)

which are germane to defendants' educational objectives are proper. *Carroll II*, 42 F.3d at 127. Plaintiffs do not show any lack of nexus between OSPIRG's off campus activities and expenditures, including administrative expenditures, and the educational goals of defendants. Defendants may compel funding of OSPIRG's activities and expenditures, including those which occur off campus, which are germane to LCC's educational objectives. Accordingly, the court finds that plaintiffs fail to sustain their burden on summary judgment.

IV. ORDER

Defendants' motion to strike is granted in part and denied in part. Plaintiffs' request for judicial notice is granted.

V. RECOMMENDATION

Based on the foregoing, it is recommended that defendants' motion for summary judgment be granted and that plaintiffs' motion for summary judgment be denied.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have ten (10) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have ten (10) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to *de novo* consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this 11 day of February, 1997.

/s/ John P. Cooney
UNITED STATES MAGISTRATE JUDGE

Filed 10/11/96

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

WILLIAM G. HOLLINGSWORTH, et al.,	No. 95-06321-CO
Plaintiffs,	DECLARATION OF MARK T. GALLAGHER IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND INJUNCTIVE RELIEF
v.	
LANE COMMUNITY COLLEGE, et al.,	
Defendants.	

I, Mark T. Gallagher, hereby declare as follows:

1. I am one of the attorneys for plaintiffs William G. Hollingsworth, Lisa R. Hollingsworth, and Jeffery D. Fernandes in this action. I have personal knowledge of the facts set forth below and, if called upon to testify as a witness, I could and would testify competently thereto under oath.

2. A true and correct copy of excerpts of the Lane Community College Board policy handbook are attached hereto as Attachment A.

3. A true and correct copy of Oregon Student Public Interest Research Group's (OSPIRG) Responses to Plaintiffs' Request for Admissions is attached hereto as Attachment B.

4. A true and correct copy of Lane Community College's Responses to Plaintiffs' Request for Admissions is attached hereto as Attachment C.

5. A true and correct copy of OSPIRG's Responses to Plaintiffs' Interrogatories is attached hereto as Attachment D.

6. A true and correct copy of Ellen Huffaker's newspaper article entitled *OSPIRG Works to Free the Planet*, Lane Community College Torch, Jan. 13, 1995, is attached hereto as Attachment E.

7. A true and correct copy of Lane Community College's Responses to Plaintiffs' Interrogatories is attached hereto as Attachment F.

8. A true and correct copy of Oregon Revised Statute 341.290(8) is attached hereto as Attachment G.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 8th day of October, 1996, at Sacramento, California.

/s/ Mark T. Gallagher
MARK T. GALLAGHER

Board Policy Handbook

Tuition and Fees 5311

The Board of Education shall annually review student tuition rates. It shall be the policy of the College to maintain tuition and fee rates at a level expected to generate approximately 20% of the revenue budgeted in the college's General Fund. Students may be assessed a mandatory fee for the purpose of supporting a Board approved, student initiated program if such a program subsequently receives a favorable vote of the student body. The administration is directed to establish procedures that will encourage maximum participation of eligible student voters in such elections.

Lane Community College
Revised and Adopted by Board Action
January 10, 1990

Cheating and Plagiarism 5129

Each instructor shall enforce reasonable regulations to ensure honesty and may take steps to take disciplinary action against students who violate such regulations.

Lane Community College
Revised and Adopted by Board Action
January 14, 1976

Associate Degrees 5130.1

The Associate of Science, Associate of Arts and Associate of General Studies Degrees shall be awarded upon satisfactory

completion of an established course of study approved and periodically reviewed by the Board of Education.

Lane Community College
Revised and Adopted by Board Action
January 14, 1976

Certificate Programs 5130.3

To accommodate those students who have a strong need for a program leading to a specific occupational competence but who, for various reasons, do not enroll in a regular degree program, the administration may organize a certificate program of less than the number of units required for an A.A. degree. A diploma will be awarded to those who satisfy the requirements. Standards of instruction in a certificate program will be comparable to those in other programs at the College.

Lane Community College
Adopted by Board Action
November 17, 1965

Student Activities 5140

The Board recognizes that the Student Government of Lane Community College is an active and vital part of the Campus Community and as such is subject to those rights and responsibilities defined by Board policy and administrative procedures.

Lane Community College
Revised and Adopted by Board Action
July 21, 1976

Organizations 5141

The Board encourages the formation of student organizations as a fulfillment of the interests of the students and as an informal extension of the process of education.

The administration and student representatives shall formulate rules for the recognition of student organizations. Only those approved organizations shall be considered eligible to share in the rights and privileges of student activities, such as the use of College facilities, channels for publicity and staff sponsorship.

Lane Community College
Revised and Adopted by Board Action
January 28, 1976

Student Government 5141.1

The student government (ASLCC) shall be considered as the embodiment of student representation separate from the College administration and not a department of the Board of Education of Lane Community College or any of its legal representatives, but shall be subject to conformance with Board policy and administrative procedures.

Lane Community College
Revised and Adopted by Board Action
January 28, 1976

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ATTORNEYS FOR: OREGON STUDENT PUBLIC INTEREST RESEARCH GROUP EDUCATION FUND, INC. (OSPIRG)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

WILLIAM G. HOLLINGSWORTH, LISA R. HOLLINGSWORTH, AND JEFFERY D. FERNANDES, Plaintiffs, vs. LANE COMMUNITY COLLEGE; LANE COMMUNITY COLLEGE BOARD OF EDUCATION; JERRY MOSKUS, in his official capacity as President of Lane Community College; LINDA P. FOSSEN, in her official capacity as Vice President for Student Services of Lane Community College; OREGON STUDENT PUBLIC INTEREST RESEARCH GROUP, INC. [SIC], AN OREGON CORPORATION; AND DOES 1 THROUGH 50, Defendants.	Case No. 95-6321-CO DEFENDANT OSPRIG'S RESPONSES TO PLAINTIFFS' REQUEST FOR ADMISSIONS

Defendant Oregon Student Public Interest Research Group Education Fund, Inc., hereinafter referred to as "OSPIRG", responds to Plaintiff's First Set of Requests for Admission, dated April 30, 1996, as follows:

Defendant OSPIRG responds for itself only and objects to Plaintiff's preliminary statement to the extent it purports to call for or require responses from persons or entities other than OSPIRG.

REQUEST FOR ADMISSION NO. 1:

OSPIRG does not have written procedures available to students at Lane Community College's main campus on how to object to a specific use by OSPIRG - or specifically Lane's funding of OSPIRG of their mandatory student activity fees.

RESPONSE:

DENIED. Any student at Lane Community College who pays the Student Activity Fee is eligible to participate in the OSPIRG chapter at Lane Community College and make himself or herself eligible to become a member of the organization's statewide Board of Directors. The purposes and powers of the Board of Directors are provided in OSPIRG's written By-Laws.

REQUEST FOR ADMISSION NO. 2:

OSPIRG does not have written procedures available to students at Lane Community College's main campus on how to request a refund of any portion of the mandatory student activity fee providing funding support to OSPIRG.

RESPONSE:

ADMITTED. However, OSPIRG is without ability to do so since the fee in question is established, assessed, and collected by the Board of Education of the Lane Community College and subject to its control.

REQUEST FOR ADMISSION NO. 3:

OSPIRG does not have written procedures available to students at Lane Community College's main campus on how to request an exemption from any portion of the mandatory student activity fee providing funding support to OSPIRG.

RESPONSE:

ADMITTED. However, the student activity fee funding provided to OSPIRG is at the discretion and control of the Board of Education of the Lane Community College.

REQUEST FOR ADMISSION NO. 4:

OSPIRG does not have written procedures providing for an escrow account to place the funds received from objecting students.

RESPONSE:

ADMITTED. However, the procedures for assessing and collecting the student activity fee used to support OSPIRG are at the discretion and control of the Board of Education of Lane Community College, which has not required any funds transmitted to OSPIRG to be placed in escrow.

REQUEST FOR ADMISSION NO. 5:

OSPIRG does not provide to students at Lane Community College's main campus an explanation of the basis of the fee to be assessed to students through their mandatory student activity fee to provide funding support to OSPIRG.

RESPONSE:

ADMITTED. However, OSPIRG does not determine the amount of the fee assessed to students at Lane Community College. OSPIRG provides information to students, student leaders, and administrative officials regarding its budget, as well as activities and operations. Further, each periodic

campus-wide student body referendum held to reaffirm student support for OSPIRG states the amount of the fee assessed to students and the nature of the programs supported by that fee.

REQUEST FOR ADMISSION NO. 6:

OSPIRG is not required by Lane Community College to provide an annual report or other reporting mechanism describing its projects and activities at Lane Community College and the expenditures made in connection with each project and activity.

RESPONSE:

ADMITTED.

REQUEST FOR ADMISSION NO. 7:

OSPIRG does not provide to Lane Community College an annual report or other reporting mechanism describing its projects and activities at Lane Community College and the expenditures made in connection with each project and activity.

RESPONSE:

DENIED. OSPIRG reports on a regular basis, at least annually, to members of the Lane Community Board of Education, the College President and members of his staff, the Student Activities Director, and members of the ASLCC student government (including, in the past, then-ASLCC President William Hollingsworth).

REQUEST FOR ADMISSION NO. 8:

OSPIRG is not required by Lane Community College to provide an annual report or other reporting mechanism describing its projects and activities that take place off the Lane Community College's main campus which are funded, in whole or in part, by the Lane Community College mandatory student

activity fee and the expenditures made in connection with each project and activity.

RESPONSE:

ADMITTED.

REQUEST FOR ADMISSION NO. 9:

OSPIRG does not provide to Lane Community College an annual report or other reporting mechanism describing its projects and activities that take place off the Lane Community College's main campus which are funded, in whole or in part, by the Lane Community College mandatory student activity fee and the expenditures made in connection with each project and activity.

RESPONSE:

DENIED. OSPIRG reports on a regular basis, at least annually, to members of the Lane Community Board of Education, the College President and members of his staff, the Student Activities Director, and members of the ASLCC student government (including, in the past, then-ASLCC President William Hollingsworth).

REQUEST FOR ADMISSION NO. 10:

OSPIRG is not required by Lane Community College to provide an annual budget for review.

RESPONSE:

ADMITTED.

REQUEST FOR ADMISSION NO. 11:

OSPIRG does not provide to Lane Community College an annual budget for review.

RESPONSE:

DENIED. OSPIRG's oral and written reports provided to members of the Lane Community College community, as stated in response to Request Nos. 7 and 9, contains information regarding the organization's budget and expenditures.

DATED: June 10, 1996.

David E. Wood
Fund for Public Interest Research
LUVAAS, COBB, RICHARDS & FRASER, P.C.
Attorneys for Defendant OSPIRG

By /s/ Gregory E. Skillman
Gregory E. Skillman,
OSB #87346
Trial Attorney:
Gregory E. Skillman

Appendix F–13

CERTIFICATE OF SERVICE

IT IS CERTIFIED that a true, exact and complete copy of DEFENDANT OSPIRG'S RESPONSES TO PLAINTIFFS' REQUESTS FOR ADMISSIONS was served on the 10 day of June, 1996 by:

causing delivery of the same to the person apparently in charge at the office of, and addressed to:

****

depositing the same in the United States Mail at Eugene, Oregon, enclosed in a sealed envelope, postage paid, and addressed to:

****

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

WILLIAM G. HOLLINGSWORTH, LISA R. HOLLINGSWORTH, and JEFFREY D. FERNANDES, Plaintiffs, v. LANE COMMUNITY COLLEGE, LANE COMMUNITY COLLEGE BOARD OF EDUCATION; JERRY MOSKUS, in his official capacity as President of Lane Community College; LINDA P. FOSSEN, in her official capacity as Vice President for Student Services of Lane Community College; OREGON STUDENT PUBLIC INTEREST RESEARCH GROUP, INC. an Oregon corporation; and DOES 1 through 50, Defendants.	Case No. 95-6321-C0 LANE COMMUNITY COLLEGE DEFENDANTS' RESPONSE TO PLAINTIFFS' FIRST REQUEST FOR ADMISSIONS

Defendants Lane Community College, Lane Community College Board of Education, Jerry Moskus and Linda P. Fossen, respond to Plaintiffs' First Set of Request for Admissions as follows:

REQUEST NO. 1: Lane Community College Board of Education does not have written policies or procedures available to students at Lane Community College on how to object to a specific use of their mandatory student activity fees, including but not limited to objecting to supporting OSPIRG.

RESPONSE: While the Board itself does not have a specific policy or procedure on this specific subject, there are relevant Board policies and procedures. Deny.

REQUEST NO. 2: Lane Community College Board of Education does not have written policies or procedures available to students at Lane Community College on how to request a refund of any portion of their mandatory student activity fees to be used to support OSPIRG.

RESPONSE: See response to Request No. 1. Deny.

REQUEST NO. 3: Lane Community College Board of Education does not have written policies or procedures providing standards and criteria to follow to ensure that OSPIRG expends the funding support received from the mandatory student activity fee of the students attending the main campus of Lane Community College for an educational benefit to the students at Lane Community College's main campus.

RESPONSE: See response to Request No. 1. Deny.

REQUEST NO. 4: Lane Community College Board of Education does not have written policies or procedures requiring OSPIRG to submit an annual report or other reporting mechanism setting forth OSPIRG's projects and activities at Lane Community College's main campus and the expenditures of OSPIRG in connection with those projects and activities.

RESPONSE: See Response to Request No. 1. Deny.

REQUEST NO. 5: Lane Community College Board of Education does not have a written policies or procedures review an annual report or other reporting mechanism submitted from OSPIRG setting forth OSPIRG's projects and activities at Lane Community College's main campus and the expenditures of OSPIRG in connection with those projects and activities.

RESPONSE: See Response to No. 1. Deny.

REQUEST NO. 6: The president of Lane Community College does not review an annual report or other reporting mechanism submitted by OSPIRG setting forth OSPIRG's projects and activities at Lane Community College's main campus and the expenditures of OSPIRG in connection with those projects and activities.

RESPONSE: Admit.

REQUEST NO. 7: Lane Community College Board of Education does not have written policies or procedures requiring OSPIRG to submit an annual budget for review.

RESPONSE: Admit.

REQUEST NO. 8: The president of Lane Community College does not review and approve OSPIRG's annual budget.

RESPONSE: Admit.

REQUEST NO. 9: Lane Community College Board of Education does not have written policies or procedures to provide to the students attending Lane Community College's main campus an adequate explanation of the basis of the $2 mandatory student activity fee assessed to support OSPIRG prior to its collect [sic].

RESPONSE: See Response to No. 1. Deny.

REQUEST NO. 10: Lane Community College Board of Education does not have written policies and procedures setting

forth a standard and criteria to be used to identify those student groups whose political activities are of such a nature as to disqualify them from receiving funding support from mandatory student activity fees.

RESPONSE: See Response to No. 1. Deny.

REQUEST NO. 11: Lane Community College Board of Education does not have written policies and procedures setting forth a standard and criteria to be used to ensure that a student group receiving funding support from mandatory student activities fees does not use that support to fund partisan activities including but not limited to lobby the Legislative Assembly, support or oppose initiative or referendum petitions or measures.

RESPONSE: See Response to No. 1. Deny.

REQUEST NO. 12: Lane Community College Board of Education does not have written policies and procedures setting forth a standard and criteria to be used to identify any student groups that are ineligible for funding support from mandatory fees.

RESPONSE: See Response to No. 1. Deny.

REQUEST NO. 13: Lane Community College Board of Education does not have written policies and procedures setting forth a standard and criteria to be used to ensure that OSPIRG spends as much at Lane Community College's main campus as it receives as funding support from the mandatory student activity fee at Lane Community College's main campus.

RESPONSE: See Response to No. 1. Deny.

REQUEST NO. 14: The president of Lane Community College does not review documents to ensure that OSPIRG spends as much at Lane Community College's main campus as

it receives as funding support from the mandatory student activity fee at Lane Community College's main campus.

RESPONSE: Admit.

Dated this 31 day of May, 1996.

/s/ THOMAS S. MOORE
Thomas S. Moore, OSB# 62061
Attorney for Defendants Lane Community College, Lane Community College Board of Education, Jerry Moskus and Linda P. Fossen

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing LANE COMMUNITY DEFENDANTS' RESPONSE TO REQUEST FOR ADMISSIONS on the following named attorney(s) of record by mailing to said attorney(s) a true and correct copy thereof, certified by me as such, placed in a sealed envelope, with postage prepaid, addressed to said attorney(s) at the last known address of said attorney(s), and deposited in the U.S. Post Office at Portland, Oregon on this day.

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DATED this 31st day of May, 1996.

/s/ THOMAS S. MOORE

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Attorney for Defendants Lane Community College, Lane Community College Board of Education, Jerry Moskus, and Linda P. Fossen

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ATTORNEYS FOR: OREGON STUDENT PUBLIC INTEREST RESEARCH GROUP EDUCATION FUND, INC. (OSPIRG)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

WILLIAM G. HOLLINGSWORTH, LISA R. HOLLINGSWORTH, AND JEFFERY D. FERNANDES, Plaintiffs, vs. LANE COMMUNITY COLLEGE; LANE COMMUNITY COLLEGE BOARD OF EDUCATION; JERRY MOSKUS, in his official capacity as President of Lane Community College; LINDA P. Fossen, in her official capacity as Vice President for Student Services of Lane Community College; OREGON STUDENT PUBLIC INTEREST RESEARCH GROUP, INC. [SIC], AN OREGON CORPORATION; AND DOES 1 THROUGH 50, Defendants.	Case No. 95-6321-CO DEFENDANT OSPRIG'S RESPONSES TO PLAINTIFFS' INTERROGATORIES

Defendant Oregon Student Public Interest Research Group Education Fund, Inc., hereinafter referred to as "OSPIRG", responds to Plaintiff's First Set of Interrogatories, dated April 25, 1996, as follows:

Defendant OSPIRG responds for itself only. OSPIRG objects to Plaintiffs' preliminary statement to the extent it purports to call for or require Interrogatory responses from persons or entities other than OSPIRG.

Defendant OSPIRG states a general objection to Plaintiffs' requests for information for any years during which OSPIRG did not have a chapter at, and did not receive funding from, Lane Community College.

Defendant OSPIRG states a general objection to Plaintiffs' failure to specify whether information is sought on a calendar year, academic year, or fiscal year basis. Without waiving said objection, OSPIRG will specify in its response the basis for its answer.

INTERROGATORY NO. 1:

Describe all sources of revenues by category received by OSPIRG for years 1989-1996 (including but not limited to student fees received from college campus chapters of OSPIRG, interest from investments, and donations).

RESPONSE:

Defendant OSPIRG objects to this Interrogatory to the extent it requests identification of OSPIRG revenue other than and unrelated to OSPIRG's Lane Community College's Student Activity Fee revenue, which is the subject of this proceeding, as framed by Plaintiffs' Complaint. Without waiving the foregoing objection, OSPIRG states that its total annual gross revenue from Lane Community College Student Activity Fees has been as follows (all years are fiscal years):

1990 - 1991: $45,923.00
1991 - 1992: $51,990.00
1992 - 1993: $53,750.00
1993 - 1994: $52,425.00
1994 - 1996: $58,510.00

INTERROGATORY NO. 2:

Does OSPIRG segregate revenues received into separate funds or accounts depending on the type of revenue received?

RESPONSE:

No. OSPIRG does not segregate revenues received into separate accounts, though OSPIRG's financial systems provide for separate tracking of revenues received from one or more sources.

INTERROGATORY NO. 3:

If the answer to the preceding Interrogatory is yes, please provide the account numbers, names of banks, and addresses where the separate accounts are located and what types of revenues are placed in which accounts.

RESPONSE:

Not applicable, since Interrogatory No. 2 was answered in the negative.

INTERROGATORY NO. 4:

For each year, beginning in 1989, please state the amount of revenue received from the Lane Community College chapter of OSPIRG.

RESPONSE:

The information responsive to this Interrogatory is provided in response to Interrogatory No. 1.

INTERROGATORY NO. 5:

For each year, beginning in 1989, please describe with particularity OSPIRG's projects and activities at Lane Community College's main campus.

RESPONSE:

OSPIRG objects to the breadth and vagueness of this Interrogatory. Without waiving this objection, OSPIRG states that students at Lane Community College select projects and activities on a periodic basis (annually, monthly, weekly, by academic term) which meet the criteria they determine. Activities range from research and writing projects, educational forums and presentations, debates, publication of newsletters, fact sheets and other materials, internships, and direct community service projects. Issue areas include, but are not limited to, environmental education, consumer protection, renter's rights, recycling, transportation, energy policy, hunger and homelessness relief, clean air, clean water, child care, toxins, pesticides, and streamwalks.

INTERROGATORY NO. 6:

For each project and activity identified in the preceding Interrogatory, please state the expenditure made by OSPIRG in connection with each identified project and activity.

RESPONSE:

OSPIRG does not track expenditures specific to each project and activity.

INTERROGATORY NO. 7:

Please describe the manner in which each project and activity identified in Interrogatory No. 5 was selected, who was involved in the selection of the project and activity, and what criteria was used to select the project and activity.

RESPONSE:

OSPIRG objects to Plaintiffs' request for identification of the "manner" or process by which each individual project or activity stated in Interrogatory No. 5 was selected. Without waiving this objection, OSPIRG states that, in general terms, projects and activities at Lane Community College, such as those described in Interrogatory No. 5, are proposed, discussed, and selected by students at Lane Community College. All students at Lane Community College are eligible to participate in OSPIRG, including the process for deciding the chapter's projects and activities.

OSPIRG's Board of Directors, composed of representatives from the campus chapters, deliberates and votes on recommendations made to it. Determinations by chapters and Board of Directors can be made on the basis of criteria including, but not limited to: interest of students and the college community, educational benefit to be provided by the project or activity and derived by students therefrom, applicability within the structure and limitations of the organization, and student participation.

INTERROGATORY NO. 8:

For each year, beginning in 1989, please describe with particularity OSPIRG's projects and activities performed off the main campus of Lane Community College but supported by funds received from Lane Community College.

RESPONSE:

OSPIRG incorporates by reference the response to Interrogatory No. 5. Specifically, many of the projects and activities of the Lane Community College chapter of OSPIRG take place off the immediate grounds of the Lane Community College main campus. Similarly, projects and activities which take place at Lane Community College and its surrounding

community may take place at other campuses in Oregon, and in the same way that the Lane Community College chapter's activities are reported to and shared with students at other campuses, Lane Community College students are informed of, and given the opportunity to participate in, the projects and activities engaged in at those other campuses as well as off-campus throughout Oregon.

INTERROGATORY NO. 9:

For each project and activity identified in the preceding Interrogatory, please state the expenditure made by OSPIRG in connection with each identified project and activity.

RESPONSE:

OSPIRG does not track expenditures specific to each project and activity.

INTERROGATORY NO. 10:

Please explain, with particularity, how OSPIRG calculates the amount of the student activity fee to be assessed to students on the various college campuses including, but not limited to, the amount of student activity fee to be assessed the students at Lane Community College for the academic years 1989 through 1996.

RESPONSE:

OSPIRG objects to the extent Plaintiffs seek information regarding OSPIRG's campus chapters other than Lane Community College, which is the subject of this proceeding as framed by Plaintiffs' Complaint, and to the request for information for all years during which OSPIRG did not have a chapter at Lane Community College. Without waiving these objections, OSPIRG states that it does not determine, and has not determined at any time during its presence as a student organization at Lane Community College, the amount to be

assessed to students at that school. The amount of the student activity fee collected by Lane Community College to support OSPIRG is determined and assessed by the Board of Education of Lane Community College and subject to periodic approval through a referendum posed to the Lane Community College student body. Students at Lane Community College recently approved by a 78% majority a continuation of the OSPIRG chapter and established the recommendation for the amount of the fee.

INTERROGATORY NO. 11:

Please identify, for each year beginning in 1989, what portion of the revenue received by OSPIRG from the Lane Community College chapter of OSPIRG was expended to cover the costs of OSPIRG's statewide conferences.

RESPONSE:

OSPIRG objects to this question, given the vagueness of Plaintiffs' request regarding "statewide conferences," and to the request for information for all years during which OSPIRG did not have a chapter at Lane Community College. Without waiving these objections, OSPIRG states that expenditures are not tracked specific to each activity engaged in by the organization, including so-called "statewide conference." Expenditures are made consistent with the organization's annual budget as determined and approved by the student Board of Directors.

INTERROGATORY NO. 12:

Please provide the name, address, and telephone number of each student from Lane Community College who attended a statewide conference sponsored by OSPIRG during the academic years 1989 through 1996.

RESPONSE:

OSPIRG objects to this question, given the vagueness of Plaintiffs' request regarding "statewide conferences," and to the request for information for all years during which OSPIRG did not have a chapter at Lane Community College. Without waiving these objections, OSPIRG states that this information is not available.

INTERROGATORY NO. 13:

Please identify, for each year beginning in 1989, what portion of the revenues received by OSPIRG from Lane Community College chapter of OSPIRG was expended to cover the costs of OSPIRG's administrative staff including its professional staff.

RESPONSE:

OSPIRG objects to Plaintiffs' characterization of "revenues received by OSPIRG from Lane Community College chapter of OSPIRG . . .". OSPIRG receives revenue from Lane Community College as assessed to and collected from students by the College's Board of Education. Without waiving this objection, OSPIRG states that it does not segregate and separately track revenues from Lane Community College in such a way as to identify those with particular expenditures of the organization, including those for so-called "administrative staff" and "professional staff."

INTERROGATORY NO. 14:

Please identify, for each year beginning in 1989, what portion of the revenues received by OSPIRG from Lane Community College chapter of OSPIRG was expended to cover the costs of the statewide administrative expenses.

RESPONSE:

OSPIRG objects to Plaintiffs' characterization of "revenues received by OSPIRG from Lane Community College chapter of OSPIRG . . .". OSPIRG receives revenue from Lane Community College as assessed to and collected from students by the College's Board of Education. Without waiving this objection, OSPIRG states that it does not segregate and separately track revenues from Lane Community College in such a way as to identify those with particular expenditures of the organization. All so-called "statewide administrative expenses" incurred by OSPIRG relate directly to the activities and operations of OSPIRG and its various chapters, including the chapter at Lane Community College.

INTERROGATORY NO. 15:

Please describe the manner in which OSPIRG provides information to Lane Community College for academic years 1989 through 1996, of its projects and activities on Lane Community College and the expenditures made in connection with each project and activity.

RESPONSE:

As requested, OSPIRG provides oral and written reports to various persons at Lane Community College regarding the structure, operation, and activities of OSPIRG. Such reports have been made to members of the Associated Students at Lane Community College ("ASLCC"), including former ASLCC President and Plaintiff William Hollingsworth, to members of the Board of Education, and to members of the Lane Community College administration and faculty.

INTERROGATORY NO. 16:

Please describe with particularity the contents of OSPIRG's information provided in the preceding Interrogatory

(in lieu of describing the information, you may provide the relevant documents).

RESPONSE:

Information provided in reports given to the persons listed in response to Interrogatory No. 15 has included: line item budgets and budget narratives; reports of expenditures; history of OSPIRG, including its history at Lane Community College, with reference to establishment of the fee to support OSPIRG, results of periodic campus-wide referenda to continue the OSPIRG program and fee at Lane Community College; descriptions of the organization's projects and activities at Lane Community College and elsewhere; descriptions of the goals and accomplishments of OSPIRG; descriptions of the structure of the organization, including representation on its Board of Directors.

INTERROGATORY NO. 17:

Please describe with particularity whether OSPIRG shares office space, staff (professional, administrative, or clerical), or supplies with any other entity, organization, foundation, or group.

RESPONSE:

OSPIRG occupies office space at Lane Community College in a building occupied by other student organizations and campus facilities, and at other chapter campuses similarly occupied by other student organizations and campus facilities. OSPIRG occupies office space in Portland along with other non-profit organizations. OSPIRG shares in reimbursement arrangements with other non-profit organizations for certain operating and overhead expenses. Certain individuals employed by OSPIRG are also separately employed by other organizations.

INTERROGATORY NO. 18:

Please describe the procedures available to students at Lane Community College to object to a specific use of student fees by OSPIRG prior to the expenditure.

RESPONSE:

OSPIRG objects to the vagueness of this Interrogatory. Without waiving such objection, OSPIRG states that a student at Lane Community College could object by: becoming a participant in the organization at Lane Community College; becoming a member of the organization's Board of Directors; voting in campus-wide elections regarding OSPIRG's continuation at Lane Community College; writing a letter to OSPIRG stating the objection; coming to the offices of OSPIRG to state that objection; visiting, writing, or calling the administration of Lane Community College regarding the objection; visiting, writing, or calling the Lane Community College Board of Education regarding the objection.

INTERROGATORY NO. 19:

Please describe all duties and responsibilities of each person receiving a salary of any kind whatsoever from OSPIRG, including the person's name, position, business address, and telephone number (whether full time or part time or hourly).

RESPONSE:

OSPIRG objects to the vagueness of this Interrogatory, as the duties and responsibilities of staff people change as the Board of Directors dictates. Without waiving this objection, OSPIRG states that at the present time the following individuals, with the following duties and responsibilities, receive a salary from OSPIRG:

Maureen Kirk - Executive Director; management of staff and operations, oversee interns, oversee budgets

Laura Etherton - Administrative Director; financial management, program/issue back-up, publications production

Maren Souders - Office Manager; general administration, bookkeeping, program/issue back-up

Chris Taylor - Environmental Advocate; research, education, and outreach on selected environmental issues, oversee interns

Laura Culberson - Consumer Advocate; research, education and outreach on selected consumer issues, oversee interns

Kristin Lee - Campus Staff; coordinate activities for student interns and volunteers; program/issue work

Business address: 1536 SE 11th Avenue
Portland, OR 97214

Business telephone: (503) 231-4181

INTERROGATORY NO. 20:

Please state the date OSPIRG received tax-exempt status under Section 501(c) (3) of the Internal Revenue Code.

RESPONSE:

By letter dated December 28, 1976, with an effective date of April 9, 1976.

INTERROGATORY NO. 21:

Please describe each document used in preparing your responses to these Interrogatories.

RESPONSE:

Written reports described in response to Interrogatory No. 15; the organization's audited financial statements and Internal Revenue Service Forms 990; Internal Revenue Service Exempt Status Determination Letter.

INTERROGATORY NO. 22:

Please provide the name, position, business address, and telephone number of each person who assisted in providing the responses to these Interrogatories excluding clerical assistance.

RESPONSE:

Maureen Kirk, Executive Director
Oregon Student Public Interest Research Group
Education Fund
1536 SE 11th Avenue
Portland, OR 97214
(503) 231-4181

Laura Etherton, Administrative Director
Oregon Student Public Interest Research Group
Education Fund
1536 SE 11th Avenue
Portland, OR 97214
(503) 231-4181

INTERROGATORY NO. 25 (sic):

List the name, current address, and telephone number of each person you expect to call as a percipient (nonexpert) witness during the trial of this action.

RESPONSE:

This information is not available at this time.

DATED: June 8, 1996.

By: _____
For Defendant, OSPIRG

Appendix F–35

CERTIFICATE OF SERVICE

IT IS CERTIFIED that a true, exact and complete copy of DEFENDANT OSPIRG'S RESPONSES TO PLAINTIFFS' INTERROGATORIES was served on the 10 day of June, 1996 by:

causing delivery of the same to the person apparently in charge at the office of, and addressed to:

****

depositing the same in the United States Mail at Eugene, Oregon, enclosed in a sealed envelope, postage paid, and addressed to:

****

Sharon L. Browne
Attorney at Law
PACIFIC LEGAL FOUNDATION
2151 River Plaza Drive, Suite 305
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Thomas S. Moore, P.C.
Attorney at Law
4512 S.W. Kelly Avenue, Suite 100
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LUVAAS, COBB, RICHARDS & FRASER, P.C.
Attorneys for Defendant OSPIRG

/s/ Gregory E. Skillman
GREGORY E. SKILLMAN, OSB #87346

OSPIRG Works to Free The Planet

Starting the term off with a roar, OSPIRG students are ready to face 1995 with activism on their minds. The 104th session of Congress has begun and the Republican "Contract with America" threatens to stand in the way of many issues that LCC students feel are critical to our planet's future. By aiming to gut the Endangered Species Act, the Clean Water Act, the Clean Air act, and many other health reforms (not to mention student loans and welfare assistance), the "Contract" leaves students no choice but to get involved!

OSPIRG's lead campaign this term, "Free the Planet" is focusing on the removal of corporate polluters from sponsoring events for the 25th anniversary of Earth Day in April, as well as sending a message to Congress that students will not support legislation within the "Contract with America".

Mindy Meier, the new Chapter Chair for the LCC OSPIRG chapter, states that "We accomplished many things last term, including making sure that the plastics industry has so far been unable to weaken Oregon's recycling laws, and it looks as if this term will be filled with even greater challenges and greater victories." Lane's chapter is working on four other campaigns this term in order to increase recycling on campus, protect endangered species work on issues of hunger and homelessness, and promote clean air.

Ellen Huffaker
OSPIRG Campus organizer

Environmentalists prepare to defend threatened species and ecosystems

Michael Cough
Staff Writer

OSPIRG is speaking out against possible amendments which Congress might add to the Environmental Protection Act, making commercial development of protected land easier.

During a slide show sponsored by OSPIRG on Monday, Jan. 9, Monica Bond, an OSPIRG West Coast coordinator, described the loss of ecosystems and the proposed amendments which Congress is considering for the Environmental Protection Act.

Bond's discussion on ecosystems concentrated on the wetlands and how they work as an important part in controlling climatic changes such as the flooding which recently occurred in California. In fact, Bond claims, if just a portion of the wetlands in Mississippi had been left undeveloped, the flood which hit much of the Mid-west two years would have been 80 percent less disastrous.

A graduate of Duke University, Bond said, "four species become extinct every hour of every day because each hour 200 acres of land are developed and ecosystems are lost."

About half of all U.S. pharmaceuticals used are derived from natural compounds, said Bond. She claims that scientists discovered the bark from a tree to be effective against the AIDS virus. But she says scientists were unable to pursue the possibility because when they returned to study the tree, the marshland in which it grew had been destroyed.

Bond also explained that businesses can develop on protected land through allowances made in the Environmental Protection Act.

Businesses can propose to develop on protected lands by petitioning to the protection agencies for approval. The EPA then reviews the request and can issue the go-ahead, says Bond.

"Last year only one percent of development projects on protected lands were denied," says Bond.

Currently, despite the allowances made, some large companies have lobbied Congress to make amendments in the Environmental Protection Act, she said. These amendments would reduce the rights for endangered animals as their habitat would be destroyed for development and the animals would be moved to a zoo cage, claimed Bond.

According to Bond, wildlife federations have also attempted to lobby Congress to protect the rights of the animals and ecosystems.

Students interested in learning more about endangered species are encouraged to contact the OSPIRG office located in the basement of the Center Building.

Thomas S. Moore, P.C.
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4512 S.W. Kelly Ave.
Portland, OR 97201
(503) 241-3491

Attorney for Defendants Lane Community College, Lane Community College Board of Education, Jerry Moskus and Linda P. Fossen

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

WILLIAM G. HOLLINGSWORTH, LISA R. HOLLINGSWORTH, and JEFFREY D. FERNANDES, Plaintiffs, v. LANE COMMUNITY COLLEGE, LANE COMMUNITY COLLEGE BOARD OF EDUCATION; JERRY MOSKUS, in his official capacity as President of Lane Community College; LINDA P. FOSSEN, in her official capacity as Vice President for Student Services of Lane Community College; OREGON STUDENT PUBLIC INTEREST RESEARCH GROUP, INC. an Oregon corporation; and DOES 1 through 50, Defendants.	Case No. 95-6321-CO LANE COMMUNITY COLLEGE DEFENDANTS' RESPONSE TO INTERROGA-TORIES

Defendants Lane Community College, Lane Community College Board of Education, Jerry Moskus and Linda Fossen respond to Plaintiff's First Set of Interrogatories as follows:

INTERROGATORY NO. 1: Please explain the standard and criteria used by Lane Community College to identify those student groups whose political activities are of such a nature as to disqualify them from receiving funding support from mandatory student activity fees.

RESPONSE: Any group whose purpose is political is ineligible for such funding.

INTERROGATORY NO. 2: Please explain the review procedures followed by Lane Community College to ensure that a student group receiving funding support from mandatory student activities' fees does not use that support to fund partisan activities including but not limited to lobby the Legislative Assembly, support or oppose initiative or referendum petitions or measures.

RESPONSE: The student group must follow application procedures and be voted funding in the ASLCC election. There must be Board approval of the fee. Thereafter the group's activities are monitored by the advisor and the Director of Student Activities.

INTERROGATORY NO. 3: Please explain the procedures followed at Lane Community College to identify any student groups that are ineligible for funding support from mandatory fees.

RESPONSE: The interrogatory is unclear. There is an application process. Only groups of students from the main campus are eligible; non-credit and other students on other campuses are ineligible. See answers to Interrogatories 1 and 2.

INTERROGATORY NO. 4: Please list each and every student group that has applied from funding support from mandatory student activities fees at Lane Community College but did not meet the standard or criteria described in Interrogatory 2, and state the reasons the group was ineligible.

RESPONSE: Those responding to these interrogatories have been unable to identify any such group. If any are discovered, these interrogatory responses will be updated.

INTERROGATORY NO. 5: Please describe the procedures followed at Lane Community College to examine the expenditures of OSPIRG and/or Lane Community College chapter of OSPIRG from 1989 to 1996 to ensure that mandatory student activity fees are not expended for partisan activities.

RESPONSE: The expenditures charged to ASLCC for OSPIRG's portion of the mandatory fee falls under the general review of the LCC's auditing procedures. There is no procedure, nor is there means of tracking how OSPIRG spends its money. See responses to other interrogatories.

INTERROGATORY NO. 6: Please describe each document used in responding to the preceding interrogatory.

RESPONSE: Attached as Exhibit C.

INTERROGATORY NO. 7: Does OSPIRG or the Lane Community College chapter of OSPIRG present an annual report or other reporting mechanism to Lane Community College describing its projects and activities at Lane Community College and the expenditures made in connection with each project and activity?

RESPONSE: OSPIRG provides information on the activities and projects in which they are involved, but does not list expenditures made in connection with each activity. See response to Interrogatory No. 17.

INTERROGATORY NO. 8: If your response to Interrogatory 7 is yes, please describe the procedure followed by Lane Community College in reviewing OSPIRG's annual report or reporting mechanism on projects and activities at Lane Community College and the expenditures made in connection with each project and activity and identify the person who performs the review by name, position, business address, and telephone number.

RESPONSE: See Response to Interrogatory No. 17.

INTERROGATORY NO. 9: Please describe with particularity OSPIRG's projects and activities at Lane Community College and the expenditures made in connection with each project and activity (in lieu of responding to this interrogatory, the relevant documents may be provided.)

RESPONSE: Lane Community College does not have this information available at this time. Documents will collected and these answers supplemented.

INTERROGATORY NO. 10: Does 0SPIRG or the Lane Community College chapter of OSPIRG prepare and submit an annual budget to Lane Community College and, if so, please identify the person by name, including position, business address, and telephone number of the person who receives and reviews such budget.

RESPONSE: No.

INTERROGATORY NO. 11: Please describe the accounting method used by Lane Community College from the time it receives from a student registering for classes at Lane Community College that portion of the mandatory student activity fee being collected to support OSPIRG to the time that portion of the student's mandatory student activity fee is provided to OSPIRG and/or Lane Community College chapter of OSPIRG from 1989 to present.

RESPONSE: The fee goes into the ASLCC Mandatory Fee Account. The percent or allocated dollar amount is taken out by College Finances and sent to the group being funded.

INTERROGATORY NO. 12: Please describe the total amount of funding support OSPIRG and/or Lane Community College chapter of OSPIRG has received from the mandatory student activity fee for each year beginning in 1989.

RESPONSE: See attached Exhibit A, which was prepared by College Finances.

INTERROGATORY NO. 13: Please describe the procedures available to students at Lane Community College to object to a specific use of their mandatory student activity fees, including but not limited to objecting to supporting OSPIRG and/or Lane Community College chapter of OSPIRG.

RESPONSE: The following procedures are available to students at Lane Community College to object to a specific use of their mandatory student activity fee:

a. All students may discuss their objections with any ASLCC Officer, the Director of Student Activities, the Vice President for Student Services, and the President. Students may also work with omsbudspersons on campus to try to resolve problems.

b. ASLCC is designed to model the participatory, democratic process that exists at the local, state, and federal levels. If a student objects to all or part of the fee, he/she may initiate the special education or referendum process as described in the ASLCC Constitution and By-Laws. Since the fee programs are established and voted on by the students, the process exists for the students to also undo any portion of the fee they feel is no longer necessary. Students may initiate this process as individual citizens or as part of the leadership

opportunities presented through their participation in the ASLCC Senate.

c. If they are taking one credit class for audit, the Director of Student Activities can waive the fee request.

d. Students can also file a complaint through the grievance process, address the Board during the public comment period during Board meetings, or write letters of complaint to the editor of the TORCH.

INTERROGATORY NO. 14: Please describe the means Lane Community College advertises the procedure for objecting students to follow in opposing a specific fee allocation.

RESPONSE: The word "advertises" is confusing. There is publicity regarding the election and the right to board appearance is published.

INTERROGATORY NO. 15: Please describe the procedures followed by Lane Community College to ensure a request from a student group for funding support from the mandatory student activity fee provides an educational benefit to the students at Lane Community College, including but not limited to the name of the person, the person's title, business address, and telephone number performing the review.

RESPONSE: Requests for funding are made to ASLCC. The Director of Student Activities, Barbara Delansky, as advisor, has the responsibility of making appropriate inquiries. The Board must approve the fee. Mrs. Delansky's address and phone number are: 4000 E. 30th Avenue, Eugene, OR 97405 (541) 747-4501.

INTERROGATORY NO. 16: Please describe the standards and criteria followed by Lane Community College to ensure that a request from a student group for funding support

from the mandatory student activity fee will provide an educational benefit to the students at Lane Community College.

RESPONSE: See responses to Interrogatories Nos. 2, 15 and 17.

INTERROGATORY NO. 17: Please describe the procedures followed by Lane Community College to ensure that the portion of the mandatory student activity fee provided to OSPIRG provides an education benefit to the students at Lane Community College's main campus, including but limited to the person's name, title, business address, and telephone number who performs the review.

RESPONSE: In addition to oversight by the Director of Student Activities and periodic election and Board approvals of the fee as described in prior responses, the group's activities are monitors by advisor Steve Candee, 4000 E. 30th Avenue, Eugene, OR 97405 (541) 747-4501. He makes use of the reports and evaluations submitted by the students, as well as verbal communications and his personal observations.

INTERROGATORY NO. 18: Please describe the procedures followed by Lane Community College to ensure that OSPIRG spends as much at Lane Community College's main campus as it receives as funding support from the mandatory student activity fee at Lane Community College's main campus and the name, title, business address, and telephone number of the person who performs the review.

RESPONSE: No such specific procedures. See Response to Interrogatory No. 17.

INTERROGATORY NO. 19: Please identify each document relied upon in responding to the previous interrogatory.

RESPONSE: None.

INTERROGATORY NO. 20: Please describe the funding support request procedure a student group must follow to request support from the mandatory student activity fee, including whether the application needs to be accompanied by a financial statement and a club promotion fund request form.

RESPONSE: See prior responses and documents attached as Exhibit C.

INTERROGATORY NO. 21: Please list each student group that receives a per student per term funding support from the mandatory student activity fee at Lane Community College and the amount that student group receives from the mandatory student activity fee paid by each student attending classes at Lane Community College's main campus (*e.g.*, the $2.00 per student per term to support OSPIRG).

RESPONSE: See attached Exhibit B.

INTERROGATORY NO. 22: Please describe the procedures followed by the Lane Community College chapter of OSPIRG in requesting funding support from the mandatory student activity fee for each year beginning in 1989.

RESPONSE: OSPIRG made a request through the Director of Student Activities to be on the ballot. OSPIRG was placed on the ballot and voted on by the students and the student fee was approved by the Board.

INTERROGATORY NO. 23: Please describe each documents used in preparing your responses to these interrogatories.

RESPONSE: Most of the information came from verbal answers supplied by Barbara Delansky, Director of Student Activities. Additionally, documents attached as exhibits were reviewed.

INTERROGATORY NO. 24: Please provide the name, position, business address, and telephone number of each person who assisted in providing the responses to these interrogatories, excluding clerical assistance.

RESPONSE: Jerry Moskus, President; Linda Fossen, Vice President for Student Services; Barbara Delansky, Director of Student Activities; Carol Beckley, Budget Analyst; Stan Barker, Accounting Manager; Steve Candee, Advisor to OSPIRG. All are located at 4000 E. 30th Avenue, Eugene, Or 97405, telephone (541) 747-4501.

INTERROGATORY NO. 25: List the name, current address, and telephone number of each person you expect to call as a percipient (nonexpert) witness during the trial of this action.

RESPONSE: Objection. Plaintiff is not entitled to this information at this time. Without waiving the objection, defendant LCC responds as follows:

No decision has been made and will not be made until discovery is further along.

Dated this 31st day of May, 1996.

/s/ Thomas S. Moore
Thomas S. Moore
OSB# 62061
Attorney for Defendants Lane Community College, Lane Community College Board of Education, Jerry Moskus, and Linda P. Fossen

Appendix F–48

VERIFICATION

STATE OF OREGON)
) ss.
County of_____)

I, _____, being first duly sworn, state that the foregoing answers to interrogatories are based on my personal knowledge.

_____

SUBSCRIBED and sworn to before me this _____ day of _____, 1996.

_____
Notary Public for Oregon
My commission expires:

Appendix F–49

Sheet1

Date Requested	Amount	Term	Account Number
25-Feb-91	$ 13,264.00	Fall Term 1990	6-07-53331-01
9-Apr-91	$ 14,415.00	Winter Term 1991	6-07-53331-01
10-Jun-91	$ 11,629.00	Spring Term 1991	6-07-53331-01
4-Oct-91	$ 6,615.00	Summer Term 1991	6-07-53331-01
8-Jan-92	$ 13,840.00	Fall Term 1991	6-07-53331-01
9-Apr-92	$ 14,958.00	Winter Term 1992	6-07-53331-01
24-Jul-92	$ 15,855.00	Spring Term 1992	6-07-53331-01
30-Oct-92	$ 7,337.00	Summer Term 1992	607-059-8034-802023-6131
28-Jan-93	$ 16,347.00	Fall Term 1992	607-059-8034-802023-6131
2-Jun-93	$ 30,140,00	Winter & Spring 1993	607-059-8034-802023-6131
5-Jan-94	$ 23,446.00	Summer & Fall 1993	607-059-8034-802023-6131
18-Apr-94	$ 15,406.00	Winter 1994	607-059-8034-802023-6131

15-Jun-94	$ 14,454,00	Spring 1994	607-059-8034-802023-6131
8-Nov-94	$ 6,382.00	Summer 1994	607-059-8034-802023-6131
14-Mar-95	$ 29,706.00	Fall 1994 & Winter 1995	607-059-8034-802023-6131
8-Jan-96	$ 28,804.00	Fall 1995 & Winter 1996	607-059-8034-802023-6131
	$262,598.00		

Appendix F–51

RATIFIED CLUBS FOR 95/96 by ASLCC

N.A.S.A.	Frank Merrill	#2238
Black Student Union Club	Greg Evans	#2340
Lane Computer Society	Jerry Ross, Computer Tech,	#2827
S.O.M.E.	Mason Davis	#2239
Nursing Club & Alumni Assn	Joyce Godels	#2619
Lane Writers Club	Sharon Thomas	#2145
Latino Club	Connie Mesquita	#2276
Islamic Club	Greg Evans	#2340

This is the ASLCC list as of May 19, 1996.

Bette Dorris, #2365

Appendix F–52

MEMO

TO: ALL LCC CLUBS

FROM: ASSOCIATED STUDENTS OF LANE COMMUNITY COLLEGE

RE: CLUB RATIFICATION

Beginning Fall term each year all clubs on the LCC campus must be re-ratified or reinstated by ASLCC. In order to begin a new club or reinstate a club from the previous year the forms contained in this packet must be completed and returned to the ASLCC Secretary or an ASLCC representative in Center 479 by 5:00 P.M. the Wednesday before the Senate Monday meeting.

One of the executive officers and the club advisor needs to attend the Senate meeting to request ratification and for the start up funding of up to $50.00.

Appendix F–53

CLUB RATIFICATION REQUEST FORM

Name of Club_____

Purpose of Club_____

_____

_____

_____

Signatures of at least 10 current members (credit students):

Name (signature) Date Print Name Student #

1._____

2._____

3._____

4._____

5._____

6._____

7._____

8._____

9._____

10._____

Any additional names maybe placed on the back of this sheet.

Club's President or Authorized Representative:

_____

Signature Date Print Name Phone

The above named students are active members of this club, of which I am the Advisor.

Advisor:

_____

Signature Date Print Name Phone

Date received in ASLCC 0ffice_____

Date Ratified_____

Appendix F–55

CLUB RATIFICATION FOR LCC

Name of Club_____

Date Requesting Funds before the Senate_____

The above named club has completed all requirements for establishment by fulfilling the following:

1. Submission of at least ten (10) member names;
2. Designation of a staff advisor;
3. Submission of purpose of club;
4. Designation of officers (if possible);
5. Time & Place of Meeting
   (One Meeting required before Ratification).
6. Completion of Memorandum of Notification including appropriate signatures.
7. Designated Contact Person for Student Activities

Received by ASLCC Secretary or Treasurer on:_____

Approval Date by Senate_____

Appendix F–56

GUIDELINES FOR STUDENT ORGANIZATIONS

1. Recognized Organizations

Procedures for becoming a recognized organization.

A. Each organization shall provide the ASLCC with the following information:

1. Name of Organization;

2. Purpose of Organization;

3. Officers Names and Signatures;

4. Name and Signature of Staff Advisor;

5. Ten Member Names and Student Numbers; (Must be Current Credit Students)

6. Time, Place and Dates of Meetings;

7. Held at least one meeting and chosen officers.

B. Each organization must complete a Memorandum of Notification form available in the ASLCC Office. This form requires the signatures of the President, Treasurer and the Staff Advisor; and it is necessary for all money transactions to be routed through LCC's Financial Services.

II. Advisors

A. Each organization must have a staff advisor. It is the responsibility of the students involved to find their own advisor.

B It is the function of the advisor to provide assistance and direction to the organization.

C. It is the responsibility of the advisor to ensure that the organization:

1. Is informed of college policy as relating to its activity;

2. Has all funds deposited in an account in the LCC Financial Services account as referred to in 1 B;

3. Complies with the facilities usage guidelines prior to any activities and events which require scheduling of campus facilities.

III. Organizational Funds

A. Upon completion of the recognized procedures and upon finding a willing staff advisor each organization that is ratification by ASLCC shall receive a start up fee of $50.00 to be placed in an account in LCC's Financial Services.

B. Funds will remain in the organization's account as long as it continues to function as an active and recognized organization. If an organization should cease to operate for an extended period of time, any

unencumbered funds will revert to the ASLCC upon approval of the ASLCC President and the Director of Student Activities.

C. Fund raising projects must satisfy the following criteria:

1. It must be sponsored by a recognized student organization;

2. Income must be deposited to the organization's funding account for the purpose of furthering its programs;

3. No individual(s) shall realize a personal financial gain from the project.

4. Funds shall not be made available for reimbursement if the organization has already made the expenditure without previous approval from the ASLCC. (No reimbursement after the fact)

IV. Organizational Speakers and Events

A. Clubs and organizations may have off-campus speakers. Clubs must adhere to existing college policies regarding speakers, etc.

B. Request for ASLCC to sponsor the activity, including speakers, must be arranged through the Treasurer's Office of ASLCC. Such requests should be submitted to the ASLCC Office seven days before the meeting in writing and include the following:

1. Purpose of the activity;

2. Facility needed;

3. Advisor's name with extension;

4. Officer's names and telephone numbers;

5. List of any necessary equipment, such as platforms, microphones, etc.;

6. Security (if applicable).

V. Items Eligible for Funding

A. Club social events (parties, picnics, etc., involving only club members);

B. Refreshments (no alcoholic beverages allowed);

C. Transportation, lodging, meals, and other expenses related to travel and conferences, including conference registration fees;

D. Sponsorship of cultural events or directly related expenses: such as dances, concerts, films, lectures, workshops, debates, tournaments or exhibitions; or a presentation to spectators or participation by non-members of the club;

E. Purchase or rental of equipment;

F. Office supplies;

G. Publicity and public information (not for cultural or athletic events);

H. Communications (telephone or faxes)

VI. Items Not Eligible for Funding

A. Personal benefit;

B. Any individual or organization that is not an officially recognized LCC main campus student organization;

C. Campaigns for political office or in promotion of or opposition to a ballot measure;

D. Athletic competition (for example: uniforms and equipment);

E. Material for regular classroom instruction.

VII. Senate Approval of Funds

A. Requests which would approve the "start up" fee of $50.00 should be by a 3/4 vote of the Senate;

B. Requests which would approve any additional fees for events should be by a 3/4 vote of the Senate.

LANE COMMUNITY COLLEGE

Student Activities/
Auxiliary Servs.
Date:_____

MEMORANDUM OF NOTIFICATION

TO: Financial Services Office

FROM:

RE: Student Organization Account

Name of Club or Organization_____
_____

Budget Account Number_____

The following signatures are authorized to disburse approved funds. All disbursements must have three (3) authorized signatures on the request for funds. Student Support Services and the Financial Services Office should receive notification of any change in the signatures.

_____
Organization Treasurer

_____
Organization President or Officer

_____
Organization Staff Advisor

Approved by_____
Director of Student Activities & Auxiliary Services
(revised 8/78)

ASLCC Mandatory Student Activity Fee

What do I get for my money?

We are a Community College, and, as such, we serve a number of different populations - students wishing to transfer to 4 year schools, displaced workers, vocational students, women, students of color, students with special needs, and students with children. **The ASLCC Mandatory Student Activity Fee is $23.00 and is assessed to all students taking one or more credit classes on the main campus.** The fee funds the following services:

$5	**ASLCC operating expenses, photo ID, legal services, *Denali*, cultural activities, and Book Exchange.** Student Government officers represent student needs and interests in a variety of college councils, committees and to the Board of Education. In addition, students may access free legal services to assist in landlord/tenant disputes, wills, custody issues and a variety of other, non-criminal legal situations*. Speakers, entertainment and a variety of recreational/ cultural activities are provided by ASLCC cultural programs. DENALI gets 3% of this $5/NASA gets 5% of this $5

$5	**ASLCC Child Care Co-op - Repeated surveys and consultant recommendations have demonstrated the need for quality child care on campus.** The $5.00 increase in fees was approved by students during the 1991 spring elections. As a student supported program, the co-op provides an opportunity for student parents to network and to support one another. Students who do not have children are welcome in the co-op as volunteers, to be part of advisory groups, or to participate in workshops sponsored by the co-op. In addition to the co-op, the fee will provide subsidies for students who need off-campus care or have children in the ECE*.
$2.25	OSPIRG - first approved by students during the 1990 ASLCC elections, OSPIRG was reaffirmed by students during the 1996 ASLCC elections. OSPIRG is a statewide educational effort that works on consumer interest topics such as clean water, safe toys, pesticide use and renter reform. All money dedicated to OSPIRG is used for education.
$6	Student Health Services - Students approved a $6 increase in the **ASLCC Mandatory Student Activity Fee** to retain student health services which were scheduled to be cut from the 93-94 budget. Student Health Services provides primary health care to students during the school year and basic first aid and necessary immunizations during the summer. This funding will also enable services offered to summer students to be expanded to include more of the primary care services currently available to students during Fall-Spring.

$5	Students approved a $5 increase in the **ASLCC Mandatory Student Activity Fee** to provide expanded sports, recreation, and fitness opportunities for students and their families in the 1994 ASLCC elections. These programs will begin summer term 1994. Please contact the athletic department for more information.
Total = $23.25	All of the activities funded by student fees provide opportunities to enhance leadership skills and to participate in a variety of educational and recreational activities. With incidental and student fees at 4 year schools well over $100 a term, Lane students are getting a lot of services for only $23.00.

* Demand for these services is very high. We may be unable to accommodate all students who need these services. Where possible, service hours and other resources are increased to serve the greatest number of students possible.

If you have any questions regarding these fees, or the services provided, please contact the ASLCC office 747-4501. x 2331 or the Student Activities Office, 747-4501, x 2337.

ASLCC Voters' Pamphlet
BALLOT MEASURE

OSPIRG STUDENT FEE
REAFFIRMATION AND INCREASE

"OSPIRG (the Oregon Student Public Interest Research Group) is a statewide, student-directed organization which will actively involve LCC students in the issues of hunger and homelessness, recycling, environment, consumer interest, renter and students' rights, community service and other issues of general public interest. Do you support the continued existence of the LCC chapter of OSPIRG through the student activity fee at an amount which reflects $2.25 per student per term?"

ASLCC Voter's Pamphlet
UNCONTESTED CANDIDATES

[PHOTO OMITTED]
Daniel Armanino,
ASLCC Treasurer Candidate

"As an active member of ASLCC I have been involved with such issues as the protection of financial aid benefits, affordable student housing, and the creation of present and future recycling programs. With the cooperation of students and other campus groups such as OSPIRG, I have, and will continue to represent the student body on the issues at hand. My goal as Treasurer will be not only to keep monetary accountings, but to continue my efforts towards the full reduction of the ASLCC budget deficit, and be involved with all aspects of student representation. I will give the students of Lane Community College 100 percent of my effort. Please feel free to call me at 747-4501, ext. 2334."

[PHOTO OMITTED]
Robert Dickerson,
ASLCC Cultural Director Candidate

"I would like to continue bringing culturally diverse events to the students, as well as the community of Lane Community College."

Appendix F–66

ASLCC Voters' Pamphlet
INSTRUCTIONS

Students interested in voting on May 6, 7, and 8 **must pay the mandatory $23 student fee** and **be enrolled in credit classes on the main campus. High school students** must pay the **$21** student fee and be enrolled in classes on the main campus.

Students must bring a student body card **valid through spring term of 1996.**

Students may vote from **8 a.m. to 8 p.m. on Monday, May 6.** They can also vote from **8 a.m. to 8 p.m. on May 7 and 8.**

The three polling stations are located:

a) *in the cafeteria*

b) *outside the Health and P.E. Building*

c) *on the second floor of the Center Building, across from the Student Resource Center.*

ASLCC Voter's Pamphlet
WRITE-INS

Student voters have the option of writing in any candidate for an ASLCC office who meet the minimum qualifications for the position. However, it would be advisable to make sure the candidate a student wishes to write in has the skills necessary to hold the office and wishes to do so.

To write in a candidate:

a) *Ask the poll worker for a write-in ballot.*

b) *In the necessary space, **print neatly** the full name of the candidate the student wishes to write in, as well as the office name (senator, president, etc.).*

c) *Turn in the write-in ballot, along with the official ASLCC ballot, into the ballot box.*

Citation Found Document Rank 1of 1 Database
OR ST s 341.290 OR-ST-ANN
O.R.S. § 341.290

TEXT

1995 OREGON REVISED STATUTES
TITLE 30. EDUCATION AND CULTURAL FACILITIES
CHAPTER 341. COMMUNITY COLLEGES
BOARD OF EDUCATION
(POWERS)

CORP. © 1995 by STATE OF OREGON
Legislative Counsel Committee
Current through 1995 Sp. Sess.

341.290. General powers.

The board of education of a community college district shall be responsible for the general supervision and control of any and all community colleges operated by the district. Consistent with any applicable rules of the State Board of Education, the board may:

(1) Subject to ORS chapter 238, employ administrative officers, professional personnel and other employees, define their duties, terms and conditions of employment and prescribe compensation therefor, pursuant to ORS 243.650 to 243.782.

(2) Enact rules for the government of the community college, including professional personnel and other employees thereof and students therein.

(3) Prescribe the educational program.

(4) Control use of and access to the grounds, buildings, books, equipment and other property of the district.

(5) Acquire, receive, hold, control, convey, sell, manage, operate, lease, lease-purchase, lend, invest, improve and develop any and all property of whatever nature given to or

appropriated for the use, support or benefit of any activity under the control of the board, according to the terms and conditions of such gift or appropriation.

(6) Purchase real property upon a contractual basis when the period of time allowed for payment under the contract does not exceed 30 years.

(7) Fix standards of admission to the community college, prescribe and collect tuition for admission to the community college, including fixing different tuition rates for students who reside in the district, students who do not reside in the district but are residents of the state and students who do not reside in the state.

(8) Prescribe and collect fees and expend funds so raised for special programs and services for the students and for programs for the cultural and physical development of the students.

(9) Provide and disseminate to the public information relating to the program, operation and finances of the community college.

(10) Establish or contract for advisory and consultant services.

(11) Take, hold and dispose of mortgages on real and personal property acquired by way of gift or arising out of transactions entered into in accordance with the powers, duties and authority of the board and institute, maintain and participate in suits and actions and other judicial proceedings in the name of the district for the foreclosure of such mortgages.

(12) Maintain programs, services and facilities, and, in connection therewith, cooperate and enter into agreements with any person or public or private agency.

(13) Provide student services including health, guidance, counseling and placement services, and contract therefor.

(14) Join appropriate associations and pay any required dues therefor from resources of the district.

(15) Apply for federal funds and accept and enter into any contracts or agreements for the receipt of such funds from the Federal Government or its agencies for educational purposes.

(16) Exercise any other power, duty or responsibility necessary to carry out the functions under this section or required by law.

(17) Prescribe rules for the use and access to public records of the district.

Filed 11/12/96

THOMAS S. MOORE, P.C.
Thomas S. Moore, OSB# 62061
Drake A. Hood, OSB# 95302
4512 S.W. Kelly Avenue
Portland, OR 97201
(503) 241-3491

Attorneys for Defendants Lane Community College, Lane Community College Board of Education, Jerry Moskus and Linda P. Fossen

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

WILLIAM G. HOLLINGSWORTH, LISA R. HOLLINGSWORTH, and JEFFREY D. FERNANDES, Plaintiffs, v. LANE COMMUNITY COLLEGE, LANE COMMUNITY COLLEGE BOARD OF EDUCATION; JERRY MOSKUS, in his official capacity as President of Lane Community College; LINDA P. FOSSEN, in her official capacity as Vice President for Student Services of Lane Community College; OREGON STUDENT PUBLIC INTEREST RESEARCH GROUP, INC. an Oregon corporation; and DOES 1 through 50, Defendants.	Case No. 95-6321-CO SECOND AFFIDAVIT OF BARBARA DELANSKY

Appendix G–2

STATE OF OREGON)
) ss.
County of Lane)

I, Barbara Delansky, being first duly sworn, depose and say:

1. I am the Director of Student Activities for defendant Lane Community College and make this affidavit based on personal knowledge.

2. The money the Oregon Student Public Interest Research Group ("OSPIRG") receives from Lane Community College through the activity fee is received by OSPIRG after the money is deposited in the Associated Students of Lane Community College ("ASLCC") Mandatory Fee Account and disbursed by Lane Community College's finance department.

3. The portion of the activity fee directed to OSPIRG was explained to students in 1990 before the students at Lane Community College voted to implement funding of OSPIRG through the Mandatory Activity Fee. Students are required to vote every three years on whether or not to continue funding OSPIRG through the activity fee. Students voted to uphold funding for OSPIRG in 1993 and again in 1996. Prior to each of the three votes, there was publication of OSPIRG's activities on the campus. In addition, there was debate among students regarding funding of Oregon Student Public Research Interest Group.

4. The following procedures are available to students at Lane Community College to object to a specific use of their Mandatory Student Activity Fee:

a. All students may discuss their objections with any ASLCC officer, the Director of Student Activities, the Vice President for Student Services and the President of Lane Community College. Students

may also work with ombudsman persons on campus to resolve their problems.

b. The ASLCC is designed to model the participatory democratic process that exists at the local, state, and federal levels. If a student objects to all or part of the fee, he or she may initiate the special education or referendum process as described in the ASLCC Constitution and Bylaws. Since the fee programs are established and voted on by the students, the process exists for the students to also undo any portion of the fee they feel is no longer necessary. Students may initiate this process as individual citizens or as part of the leadership opportunities presented through their participation in the ASLCC Senate.

c. If they are taking one credit class for audit, the Director of Student Activities can waive the activity fee.

d. Students may also file a complaint through the grievance process, address the Board during public comment periods during Board meetings, or write letters of complaint to the Editor of the *Torch*, the campus student newspaper.

5. The monies from the Student Activity Fee used to fund the OSPIRG are to be used only for educational purposes. Lane Community College relies upon OSPIRG's status as a 501(c)(3) corporation as defined by the Internal Revenue Code with its attendant requirements that such corporation engage only in activities allowed by the tax code.

6. The activities of the Oregon Student Public Interest Research Group are overseen by the faculty advisor for the Lane Community College Chapter of OSPIRG, Professor Steve Candee.

7. The $2.25 per student fee used to support OSPIRG is part of the total $23.25 Mandatory Student Activity Fee charged to students.

8. At least annually, representatives from OSPIRG meet with LCC staff, including Steve Candee, me, Linda Fossen, and Jerry Moskus, to discuss OSPIRG's proposed activities and goals for the upcoming year. If any of the OSPIRG goals were inconsistent with the educational goals of LCC, the LCC representatives would work with the OSPIRG representatives to reframe any inconsistent goals. However, none of the goals or projects suggested by OSPIRG have been inconsistent with LCC's educational objectives.

9. Steve Candee and I meet periodically to review OSPIRG's activities and goals.

10. OSPIRG has not been involved in advocating for or against any particular legislation or candidate to my knowledge.

11. LCC ensures, through the review processes above, and through the internal process required of all student activities, that all student groups and individuals are afforded the opportunity to present opposing views or submit opposing information. The Student Activities Office grants approval to all campus events and announcements that have submitted a name and contact number of the person submitting the information. LCC does not censor material based upon content, but does require that opposing viewpoints be afforded the same opportunity for expression.

12. A student group wishing to receive financial support from LCC must first present a request to the office of Director of Student Activities. The request is then passed on to the President of LCC and the LCC Board of Education. The Board then votes on whether or not to approve the request. If the request is approved by the Board, then the request is set for a vote by the student body. Funding for such a request from a

student group does not become effective until passed by a vote of the student body.

13. Other student groups receiving funds from the activity fee include the Native American Student Association, the Black Student Union, the Lane Computer Society, Students of Multi-cultural Ethnicity, the Nursing Club and the Alumni Association, the Lane Riders Club, the Latino Club and the Islamic Club.

Dated this __ day of November, 1996.

/s/ Barbara Delansky
Barbara Delansky

SUBSCRIBED and sworn to before me this ____ day of ____ _____, 1996.

_____
Notary Public for Oregon
My commission expires:

Appendix H–1

Filed 11/12/96

THOMAS S. MOORE, P.C.
Thomas S. Moore, OSB# 62061
Drake A. Hood, OSB# 95302
4512 S.W. Kelly Ave.
Portland, OR 97201
(503) 241-3491

Attorneys for Defendants Lane Community College,
Lane Community College Board of Education,
Jerry Moskus and Linda P. Fossen

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

WILLIAM G. HOLLINGSWORTH, LISA R. HOLLINGSWORTH, and JEFFREY D. FERNANDES, Plaintiffs, v. LANE COMMUNITY COLLEGE, LANE COMMUNITY COLLEGE BOARD OF EDUCATION; JERRY MOSKUS, in his official capacity as President of Lane Community College; LINDA P. FOSSEN, in her official capacity as Vice President for Student Services of Lane Community College; OREGON STUDENT PUBLIC INTEREST RESEARCH GROUP, INC. an Oregon corporation; and DOES I through 50, Defendants.	Case No. 95-6321-CO SECOND AFFIDAVIT OF MAUREEN KIRK

Appendix H–2

STATE OF OREGON)
) ss
County of Multnomah)

I, Maureen Kirk, being first duly sworn, depose and say:

1. I am the Executive Director for the Oregon Student Public Interest Research Group ("OSPIRG") and have been so employed for the past two and a half years. I have been employed as a staff member of OSPIRG since 1989 and worked as student volunteer between 1986 and 1989. I make this affidavit from personal knowledge.

2. OSPIRG's activities benefit Lane Community College students and the Lane Community College community in the form of research and writing projects, educational forums, presentations, debates, newsletters, fact sheets and internship and volunteer opportunities.

3. OSPIRG does not regularly employ or contract lobbyists to promote or advocate any of its activities. In 1995, OSPIRG contracted with a lobbyist to oppose an amendment to a higher education bill in the Oregon House of Representatives that would have eliminated student government's abilities to fund student groups such as OSPIRG. This is the only time I know of that OSPIRG has used a lobbyist.

4. OSPIRG does not engage in door-to-door fund raising activities or participate in a fuel oil or any other cooperative, nor does it incur administrative costs associated with such programs.

5. Attached hereto as Exhibit A is a true copy of the Articles of Incorporation with amendments of OSPIRG.

6. OSPIRG is governed by a student board of directors. The board of directors is composed of elected students from each of the participating Oregon college campuses, including three directors from the OSPIRG chapter at Lane Community

College. There are currently three participating colleges with OSPIRG chapters: Lane Community College, University of Oregon, and Lewis & Clark College. Continued funding of OSPIRG at Portland State University was recently defeated by a student body vote.

7. The duties of the board of directors include establishing the budget for OSPIRG, establishing any new programs or issues the organization undertakes and hiring and firing the Executive Director and managing the Executive Director.

8. The documents entitled *Course Credit Opportunities with OSPIRG* and *What is OSPIRG?* is attached to plaintiffs' complaint as Exhibits 1 and 2 are outdated documents that do not accurately reflect the activities of OSPIRG. OSPIRG has not employed or contracted with lobbyists to promote or advocate any of its substantive issues.

9. OSPIRG does not collect fees from students at Lane Community College or any other college or university. Money used to fund OSPIRG through the use of student activity fees is received by OSPIRG from the Associated Students of Lane Community College, the student government organization at Lane Community College. OSPIRG does not control the amount or process of funding.

10. The OSPIRG chapter at Lane Community College is one of three such chapters at Oregon universities and colleges. The other three chapters are at the University of Oregon and Lewis & Clark College.

11. OSPIRG staff consists of people hired to provide continuity and to assist in the design, development and execution of the goals and projects of OSPIRG.

12. Staff members are salaried employees of OSPIRG. They include an Executive Director, an Administrative

Director, and Administrative Assistant, Issue Specialists and Campus Coordinators.

13. Except for Campus Coordinators, the staff members are based in part in a Portland office.

14. The Administrative Director handles all financial transactions and manages the office.

15. The Administrative Assistant answers phones and assists with staff projects.

16. The Issues staff consists of two to three scientists or public policy experts who assist campus staff and students in developing projects. Each Issues Specialist is responsible for various tasks, including research and public education in his or her area of expertise.

17. Campus Coordinators assist students in local chapters by helping to coordinate local programs, advising student project leaders, conducting training sessions, and supervising interns. There is normally one campus coordinator for each local chapter.

18. At all times relevant to plaintiffs' lawsuit, OSPIRG has employed one full-time campus coordinator at the Lane Community College campus and other OSPIRG employees have worked with Lane Community College students on various issues.

19. OSPIRG is accountable to the students at Lane Community College, as well as to students at the other Oregon colleges with OSPIRG chapters, in that OSPIRG is governed by a board of directors comprised solely of students from LCC and the other Oregon colleges and universities with OSPIRG chapters. Funding of OSPIRG is also approved by students at the other Oregon colleges with OSPIRG chapters.

20. The Oregon Student Public Interest Research Group Education Fund, Inc. is an organization separate from the Oregon State Public Interest Research Group Citizens Lobby, Inc. ("Citizen's Lobby"). The Citizen's Lobby does engage in lobbying and door-to-door fund raising activities. In addition to being the Executive Director for OSPIRG, I am also the Executive Director for the Citizen's Lobby.

21. No OSPIRG money is commingled with Citizen's Lobby money, nor is OSPIRG money used to support or pay for activities of Citizen's Lobby or any other organization.

22. OSPIRG does not advocate or promote specific positions on legislation or candidates. OSPIRG urges students to learn about various issues of concern to students and campus communities and to voice their opinions as involved citizens.

23. I believe that plaintiffs have mistakenly named OSPIRG instead of the Citizen's Lobby as the organization that advocated for or against specific legislation regarding the Clean Water Act and air pollution legislation.

24. OSPIRG never informed Congress that students would not support the "Contract with America" or any specific legislation.

25. OSPIRG representatives meet with various college officials and student government leaders at LCC on an annual basis to review OSPIRG achievements and goals, and to review OSPIRG's budget, and answer questions about OSPIRG's expenditures. OSPIRG representatives also meet with the Lane Community College Board of Education prior to reaffirmation by the student body every three years.

26. Students from LCC sometimes travel to Portland to work at OSPIRG's main office and the Portland staff of OSPIRG sometimes travel to LCC to work on projects.

27. OSPIRG is the same entity that was a party in *Rounds v. The State Board of Education et al*, (Case No. 95-6132-TC) (D.Or. 1996).

Dated this _____ day of _____, 1996.

_____
Maureen Kirk

SUBSCRIBED and sworn to before me this ____ day of _____, 1996.

_____
Notary Public for Oregon
My commission expires:

Supreme Court, U.S.
FILED
FEB 26 2001
CLERK

No. 00-745

In The

Supreme Court of the United States

WILLIAM G. HOLLINGSWORTH;
LISA R. HOLLINGSWORTH;
and JEFFREY D. FERNANDES,

Petitioners,

v.

LANE COMMUNITY COLLEGE; LANE COMMUNITY COLLEGE BOARD OF EDUCATION; JERRY MOSKUS in his official capacity as President of Lane Community College; and LINDA P. FOSSEN in her official capacity as Vice President for Student Services of Lane Community College,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

On July 12, 2000, following this Court's decision in *Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217 (2000), the Board of Education for the Lane Community College District adopted the following policy concerning funding of programs to facilitate extracurricular student speech:

> Students may be assessed a mandatory fee for the purpose of supporting a board approved student-initiated program. The board will approve those student-initiated programs that it determines provide educational value to the students. After board approval, the fee initiative will be placed on the ballot for the student elections. The student election results, as they relate to the fee initiative, are advisory only. After the student elections, the fee initiative will come before the board for final approval or disapproval.

1. Does the adoption and implementation of this viewpoint-neutral policy render petitioners' case moot under Article III of the U.S. Constitution?

2. Does the adoption and implementation of this viewpoint-neutral policy satisfy the requirement that public colleges and universities protect the First Amendment interests of students who object to the use of activity fees to fund programs to facilitate extracurricular student speech?

Prior to the revision of Board policy as set out above, when a referendum vote of the students was not merely advisory, no student group requesting fees to facilitate

QUESTIONS PRESENTED – Continued

extracurricular student speech was denied funding from student activities fees.

3. Regardless of the revised policy, does the petition present a case appropriate for judicial review, where the petitioners have not been harmed or threatened with harm?

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STATEMENT OF THE CASE

a. This Court in *Board of Regents v. Southworth*, 520 U.S. 217, 120 S. Ct. 1346 (2000), considered the constitutionality of the University of Wisconsin's mandatory student activity fee system. The Court held that while "[t]he First Amendment permits a public university to charge its students an activity fee used to fund a program to facilitate extracurricular student speech," the "University must provide some protection to [objecting] students' First Amendment interests. . . . " *Id.* at 221, 233. The "proper measure, and the principal standard of protection for objecting students," the Court held, "is the requirement of viewpoint neutrality in the allocation of funding support." *Id.* at 233.

The parties in *Southworth* stipulated that funds allocated through the Student Government and Activity Fund and the General Student Services Fund were distributed in a viewpoint neutral fashion. Based on this stipulation, the Court upheld the constitutionality of the mandatory student fee system in *Southworth*. *Id.* at 233-34. As to funds distributed pursuant to student referendum, however, the Court was dubious. "The whole theory of viewpoint neutrality is that minority views are treated with the same respect as are majority views," the Court wrote, and "[t]o the extent the referendum substitutes majority determinations for viewpoint neutrality it would undermine the constitutional protection the [funding] program requires." *Id.* at 235. Because the record in *Southworth* did not fairly disclose "what protection, if any, there is for viewpoint neutrality in this part of the process," a remand was deemed necessary to resolve the point. *Id.* at 235-36.

b. Petitioners' ("the Students") statement of the case is crafted to accommodate their thesis that the issue unanswered in *Southworth* is presented here. But the issue unresolved in *Southworth* has never been an issue in this case, and respondents ("the College") amended the policy governing the allocation of mandatory student activity fees months before the Students filed their certiorari petition, in any event. The Students' statement of the case, the College respectfully submits, does not reflect the nature of the case presented in the district court or the circuit court; and it omits to mention that in July 2000, in response to the Court's signal in *Southworth*, the College amended its policy to ensure that all decisions concerning the allocation of mandatory student activity fees are implemented in a viewpoint neutral fashion.

c. To explain, the Students' complaint did not allege that the referendum aspect of the College's mandatory student activity fee system violated the principles of viewpoint neutrality identified in *Rosenberger v. Rector and Visitors, Univ. of Va.*, 515 U.S. 819 (1995), the template for decision in *Southworth*. Rather, the Students' Section 1983 complaint alleged that they derived no educational benefit from the activities of the Oregon Student Public Interest Research Group ("OSPIRG"); that they disagreed with OSPIRG-espoused political and ideological beliefs; and that the use of any part of their student fees to fund OSPIRG activities violated their free speech and association rights. The complaint did not ask that the mandatory student funding program be set aside in its entirety. Rather, it asked (i) for a declaration that the use of student fees to fund OSPIRG violated the Students' First Amendment rights; (ii) that the College be enjoined to

institute a check-off system to provide students the choice to direct their fees to OSPIRG or not; and (iii) for a refund in the amount of the student fees they paid to fund OSPIRG – two dollars for the terms that each of the Students paid the activity fee – plus interest.

The Students moved for summary judgment. They relied primarily on this Court's decisions limiting compelled financial subsidies of political or ideological causes in other contexts. *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977) (teachers could not be compelled to fund union's ideological activities not germane to bargaining agreement); *Keller v. State Bar of Cal.*, 496 U.S. 1 (1990) (lawyers could not be compelled to fund bar association's ideological activities not germane to regulation of the profession). Under *Galda v. Rutgers*, 772 F.2d 1060 (3d Cir. 1985), the Students argued, OSPIRG's activities were "social, political, and ideological," and the district court was therefore required to scrutinize strictly whether "compelling state interests" justified allocation of part of their student fees to OSPIRG. According to the Students, the College could advance no compelling state interest, because (i) some students, including the Students, did not take advantage of OSPIRG's on-campus educational benefits, and (ii) OSPIRG's off-campus activities provided the Students with no educational benefit. Voluntary funding of OSPIRG, the Students argued, was the "obvious less restrictive alternative" to mandatory fees.

The College also moved for summary judgment. The College, like the Students, did not anchor its argument in distinctions in the methods by which it secured approval for mandatory funding. Rather, the College argued that it should be given wide latitude to define and carry out its

educational mission. It maintained that it advanced this mission by creating a forum for a mix of student groups and activities, all linked to the students' educational, cultural, and physical development, even if some of the groups or activities presented viewpoints with which some students disagreed. Having created a forum for the expression of ideas, the College argued that under *Rosenberger*, it could not discriminate by impairing funding of particular groups based on viewpoint. As a consequence, the College maintained, the Students' proposed voluntary funding program solely for OSPIRG's activities would run afoul of *Rosenberger*.

In an order dated April 7, 1997 (App. C), U.S. District Judge Michael R. Hogan adopted the findings and recommendations of U.S. Magistrate Judge John P. Cooney of February 11, 1997 (App. E). The court rejected the Students' thesis and granted the College summary judgment. Applying the First Amendment analysis in *Carroll v. Blinken*, 957 F.2d 991 (2d Cir. 1992), and *Carroll v. Blinken*, 42 F.3d 122 (2d Cir. 1994), the district court found that the College established a substantial interest in funding student organizations to create "a forum for civic participation, communication, and debate" (App. E-10, E-11). It rejected the Students' claim, renewed in this Court, *see* Pet. 3, 6-7, that OSPIRG's activities were those of a political action group (App. E-12). The court applied the fact-based test in *Galda v. Bloustein*, 686 F.2d 159 (3d Cir. 1982), and found that OSPIRG's activities, both on-campus and off, were germane to the College's educational mission and furthered its "substantial interest in education" (App. E-12, E-13).

d. On appeal to the Ninth Circuit Court of Appeals, the Students reiterated their position that the First Amendment protects them from compelled financial support of OSPIRG, given their disagreement with its views. In their opening brief, the Students identified the issue for review as follows: "Whether the United States Constitution permits a state college to compel students to pay a specified, nonrefundable sum to an independent outside organization that espouses and actively promotes a political and ideological philosophy to which the students are adamantly opposed." The Students argued not that referendum approval of the use of student fees was constitutionally infirm. Rather, they argued that compelled student funding of OSPIRG's alleged "political speech" could not withstand the "strict scrutiny" called for in *Abood* and *Keller*. At no point in their briefs, opening or reply, did the Students mention referendum.

In March 1999, the court of appeals rejected application of a strict scrutiny test and affirmed the district court in an unpublished memorandum decision. The court distinguished *Galda*, where a strict scrutiny test was applied in the context of a specially assessed fee given directly to an outside organization, NJPIRG. In contrast to the situation there, the funding mechanism here provided for fees to be paid to the College, not directly to OSPIRG, with subsequent allocations made to all student groups by vote of the student body (App. A-4). In addition, the court noted, the College's funding rules were aimed at expanding speech on campus and were viewpoint-neutral (App. A-5).

e. In April 1999, the Students petitioned for rehearing or rehearing *en banc*. Again, they did not raise the

issue of allocation of activity fees by student vote or referendum at all, much less question whether the allocation at the College had in fact been viewpoint-neutral. Rather, they noted that in March 1999, this Court had granted certiorari in *Southworth*, and they argued that the decision there would no doubt determine whether a strict scrutiny test applied. The court of appeals stayed the case pending this Court's decision in *Southworth*.

The court of appeals called for supplemental briefing following this Court's decision in *Southworth* in March 2000. In response, and for the first time in the case, the Students argued that use of a student vote to approve funding for student activities, including prior student fee initiatives at the College, means that "access to the public forum depends entirely upon majoritarian consent." For the first time, the Students argued that fees "are not allocated in a viewpoint neutral manner." As a consequence, the Students argued, they were entitled to prevail as a matter of law on the record before the court of appeals. Limiting the relief requested, they asked the court of appeals to direct entry of judgment for declaratory and injunctive relief. They did not request a remand.

The College argued that the petition for rehearing should be denied, given the Students' arguments in the district court and on appeal. They pointed out that the Students had not challenged the entire system of funding activity fees, as the Students had in *Southworth*. To the contrary, the College argued, the Students had opposed funding for only one group that they considered objectionable. The College also pointed out that the Students had (i) objected to OSPIRG's funding on the ground that its activities were not germane to the College's mission

and (ii) requested application of a strict scrutiny analysis of the College's interests. Both issues, the College continued, were resolved against the Students by *Southworth*. Last, the College argued, even if the Students had challenged the entire funding program at the College, the funding statute was viewpoint-neutral and sought to expand campus speech. The record, the College concluded, established that no student group had ever been denied funding from student activity fees (*see* App. F-40, F-41).

f. In July 2000, before the court of appeals finally ruled, the Board of Education for the Lane Community College District implemented a revised policy for allocating student activity fees (Supp. App. 1-5). That policy, entitled Tuition and Fees, states (Supp. App. 5):

> Students may be assessed a mandatory fee for the purpose of supporting a board approved student-initiated program. The board will approve those student-initiated programs that it determines provide educational value to the students. After board approval, the fee initiative will be placed on the ballot for the student elections. *The student election results, as they relate to the fee initiative, are advisory only. After the student elections, the fee initiative will come before the board for final approval or disapproval.* (Emphasis supplied.)

Under the Board's policy, the decision regarding allocation of student activity fees belongs to the Board, not to

the students. It is followed and remains in place today (Supp. App. 2-3).[1]

g. The court of appeals denied the petition for rehearing in August 2000. It held that a remand to the district court was "not required to determine whether the referendum process protected viewpoint neutrality because it is undisputed that no request [for funding] was ever denied" (App. B-2). As a consequence, the court concluded, "no justiciable issue remains . . . " (*id.*). The Students, all former students of the College as of 1997, *see* Pet. at ii and App. E-2, then filed their petition for a writ of certiorari, which should be denied.

REASONS FOR DENYING THE WRIT

A. Whether The College's Student Referendum Process Protected Viewpoint Neutrality Is Moot.

a. The Students pose the question presented for decision as whether the rule of viewpoint neutrality formulated in *Southworth* is violated "when the funding of individual political and ideological student groups depends upon the majority determinations of student referenda." Although that question was not litigated in

[1] The College has filed the affidavit of J.R. Moskus, President of the College, who provides the text of the revised policy. Dr. Moskus testifies that the Board of Education duly adopted the revised policy, that the College has followed that policy since July 2000, and that the College does not rescind or allocate student activity fees based on majority student vote regarding the content of a particular organization's speech or viewpoint.

this case, had it been, the issue is moot. Under Article III of the Constitution, federal courts decide "cases" or "controversies," and there is no case or controversy if the issues presented are not "live," if the parties have no legally cognizable interest, no personal stake, in the outcome. *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 395-96 (1980). There is no case or controversy here.

b. Following this Court's decision in *Southworth*, the Students abandoned their request for a refund of the minimal part of their student fees allocated to OSPIRG and asserted an unfettered right to declaratory and injunctive relief based on the College policy of allocating student activity fees to OSPIRG according to student vote. Consistent with this, the Students' formulation of the question presented for decision in this Court assumes that the College's funding of student groups is based on the outcome of student referenda, which, as the Court now knows, is not so.

Funding of OSPIRG or any other student group at the College does not now, and will not in the future, depend "upon the majority determinations of student referenda." As of July 2000, final decisions to allocate the College's student activity fees have been made by the College District's Board of Education, not by vote of the students. As of July 2000, shortly after the Court's decision in *Southworth*, the student vote on activity fee initiatives has been purely advisory, as expressly stated in the Board's Tuition and Fees policy. Here, as in *Friends of the Earth, Inc. v. Laidlaw Envtl. Services (TOC), Inc.*, 528 U.S. 167, 189 (2000), "subsequent events [have] made it absolutely clear that the allegedly wrongful behavior could not

reasonably be expected to recur." Here, as in *Friends of the Earth*, the case is moot.

This case is not unlike those in which material changes have cured alleged constitutional defects in the law and resulted in the elimination of a case or controversy. *See, e.g., Department of Treasury v. Galioto*, 477 U.S. 556, 559-60 (1986) (equal protection challenge to statute moot after Congress amended statute to eliminate challenged distinction); *Princeton Univ. v. Schmid*, 455 U.S. 100, 103 (1982) (substantial amendment of challenged regulation mooted controversy over validity); *Diffenderfer v. Central Baptist Church of Miami, Inc.*, 404 U.S. 412, 414-15 (1972) (material change in statute governing tax exempt church property rendered case moot with respect to declaratory judgment and injunctive relief sought). Here, and consistent with *Galioto*, *Princeton*, and *Diffenderfer*, an order declaring the College's former policy invalid is not necessary, and neither is an injunction against its enforcement in the future.

c. This is apparent not only from the face of Dr. Moskus' affidavit but also from the course of this litigation. The College has asserted throughout that it was duty-bound to allocate funds on a viewpoint-neutral basis, and that it always had. The evidence bears this out. No student group has *ever* been denied funding, even under the prior policy that allowed a student vote on the allocation of fees. Everything in this record points to the reality that the College has been true to its constitutional obligations. Nothing in this record even hints that the College has ever followed the path implied by the petition – or that it ever will. As a consequence, there are no familiar indicia that recurrence of challenged conduct

will occur if a decision is not made in this case – *e.g.*, resistance to changes, *see Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 223 (2000); or insignificant changes made in new laws purporting to remedy the challenged law, *see Northeastern Fla. Chapter of the Associated General Contractors of America v. City of Jacksonville, Fla.*, 508 U.S. 656, 660-62 (1993). To the contrary, the case before the Court today is moot.

B. The Question Presented In The Students' Petition Is Not Ripe, Or They Lack Standing To Assert It.

a. As framed by the Students and litigated below, this case did not focus on whether the College's fee initiatives were viewpoint-neutral. At no time before they filed their supplemental brief in the court of appeals, and only well after they filed their petition for rehearing, did the Students argue that their First Amendment rights had been violated on the grounds asserted in this Court. In fact, the Students' position throughout had been antithetical to the notion that the College should allocate activity fees in a viewpoint-neutral manner. Viewpoint-neutrality was not their point.

Accordingly, and not surprisingly, when the court of appeals encountered the Students' abrupt about-face in the supplemental briefing, it considered whether the referendum-based issue was justiciable. Although the Students argue that the court of appeals applied a new ripeness test in denying rehearing (Pet. 12-13), nothing in the court's order indicates that this is so. To the contrary, under the traditional test for ripeness applied by this

Court, the court of appeals correctly ruled that the question the Students now seek to present is not ripe, or that they lack standing to assert it.

b. As here pertinent, an issue is appropriate for judicial review only when there has been "concrete action applying the regulation to the claimant's situation in a fashion that harms or threatens to harm him." *Lujan v. National Wildlife Fed'n*, 497 U.S. 871, 891 (1990). Here, of course, and in contrast to *Southworth*, the College has *never* denied funding to a student group, with or without a student vote (Pet. 13). Here, there has been no showing that the student vote once required for allocation of student activity fees actually resulted in harm, or even threatened actual harm to the Students, or to any student, by suppressing minority views.

The Students are mistaken, moreover, in their assertion (Pet. 13) that a referendum process, because it exists, "inherently violates viewpoint neutrality." To read this Court's decision in *Southworth* is to know that the Students are wrong. As mentioned above, the Court there observed that a referendum process, "[t]o the extent [it] substitutes majority determinations for viewpoint neutrality . . . would undermine the constitutional protection the [funding] program requires." *Southworth*, 529 U.S. at 235. Nonetheless, the Court in *Southworth* did not invalidate the referendum-based part of the program there. Rather, the Court ordered a remand to determine "what protection, if any, there is for viewpoint neutrality in [the referendum] part of the process." *Id.* at 235-36.

Here, as in *Southworth*, there is a referendum component to the College's funding program. But here, and in

contrast to *Southworth*, we can say beyond doubt that the Students have not suffered harm. Here, and in contrast to *Southworth*, the issue presented in the students' petition is not ripe, or they lack standing to assert it. *Lujan*, 497 U.S. at 891.

C. The Petition Presents No Conflict Among The Circuits.

a. Applying the *Abood-Keller* construct in its memorandum decision affirming the district court, the court of appeals concluded that funding OSPIRG was " 'germane' " to the College's "substantial governmental interests supporting the mandatory fee scheme" (App. A-5). A year later, this Court in *Southworth* set aside the *Abood-Keller* model for decision in cases of this sort. Under the circumstances, the Students argue, the Ninth Circuit Court of Appeals here, like the Seventh Circuit Court of Appeals in *Southworth*, should have remanded the case to the district court for reconsideration in light of this Court's decision. According to the Students (Pet. 10-12), the court's action here, and in contrast to the Seventh Circuit's action in *Southworth*, creates a conflict between the circuits.

The conflict described in the petition is illusory. The Court in *Southworth* established that public universities and colleges, to protect the First Amendment rights of objecting students, must allocate the specified student fees with viewpoint neutrality. 529 U.S. at 235. While the record in *Southworth* did not disclose whether the referendum aspect of the funding scheme there was viewpoint-neutral, the record here established beyond doubt that

this funding scheme was. A remand was necessary to determine whether the funding scheme in *Southworth* was viewpoint-neutral. There was no need for a remand here. There is no conflict between the Ninth Circuit's unpublished disposition in this case and the Seventh Circuit's decision on remand in *Southworth*. There is no conflict on "the same important matter. . . . " Rule 10(a).

Contrary to the petition (Pet. 12), moreover, there is no conflict between the unpublished disposition here and the Third Circuit's opinion in *Galda*, 772 F.2d 1060. The decision to remand or not, under demonstrably different circumstances, does not create a conflict on "the same important matter." It does not create a conflict that warrants Supreme Court review. At the end of the day, this Court's opinion in *Southworth* is definitive, and any perceived tension between the opinion in *Galda* and the unpublished disposition in this case has been washed away.

b. Ultimately, the court of appeals examined this case in light of this Court's decision in *Southworth* and affirmed the summary judgment. "[B]ecause no request [for funding] was ever denied," the court reasoned, there was no "justiciable issue" for decision under the *Southworth* standard (App. B-2). The petition describes this as a new ripeness requirement in conflict with the remand decisions in *Southworth* and *Galda*, but it is hard to know where the conflict lies.

The court of appeals did not create a new ripeness requirement. It applied well-established principles in light of this Court's opinion in *Southworth*. There is no Article III case or controversy if the issues are not "live,"

if the parties have no legally cognizable interest, no personal stake, in the outcome, *Geraghty*, 445 U.S. at 395-96, and student funding of the sort at issue has never been denied at the College here. In *Southworth*, and in contrast to the case here, student funding had in the past been denied by student referendum, 529 U.S. at 235, and in neither *Southworth* nor *Galda* was justiciability even an issue. There is no conflict on "the same important matter" here.

D. The Court Rejected The Students' Thesis In *Southworth*. A Decision Here Would Add Nothing Of Precedential Value.

The Students maintain that the court of appeals' unpublished disposition is not true to this Court's opinion in *Southworth*. According to the Students (Pet. 14-24), the court's pre-*Southworth* application of the *Abood-Keller* standard was at odds with *Southworth* and therefore with the First Amendment. It should be apparent by now, however, that the court of appeals decided the case the Students presented, not the case described in the petition. It should also be apparent by now that this Court rejected the Students' thesis in *Southworth*.

Although the Students complain repeatedly that the court of appeals erroneously applied the "germaneness" test from *Abood* and *Keller*, they omit to mention that they repeatedly urged both the court of appeals and the district court to apply *Abood* and *Keller*. At no time prior to this Court's opinion in *Southworth*, and despite the Court's decision in *Rosenberger*, did the Students imply, let alone argue, that viewpoint neutrality should be the

touchstone of student activity fee funding decisions at the College. To the contrary, the Students argued that OSPIRG's speech was far removed from the educational mission of the College, that they disagreed with it, and that they therefore should not be compelled to fund it. In their complaint, the Students averred that students should be permitted to check off, voluntarily, whether to participate in OSPIRG's funding.

It is not surprising, therefore, that the court of appeals relied on *Abood* and *Keller*. But that should not form the basis for certiorari now that the Court has clearly defined the applicable standard. Given the Students' theory, they plainly were not entitled to the relief they sought under the viewpoint-neutral standard in *Rosenberger* and *Southworth*. Indeed, *Southworth* rejects the notion that students need not provide financial support for speech of particular groups merely because they object. Indeed, *Southworth* rejects the idea that voluntary funding programs of the sort the Students advocate are required under the Constitution. Given the Students' theory, this case was decided against them in *Southworth*. A decision here would add nothing of precedential value.

CONCLUSION

The Court should deny the certiorari petition.

Dated: February 26, 2001.

Respectfully submitted,

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No. 00-745

IN THE
SUPREME COURT OF THE UNITED STATES
2000-2001 TERM

WILLIAM G. HOLLINGSWORTH;
LISA R. HOLLINGSWORTH;
and JEFFREY D. FERNANDES,

Petitioners,

v.

LANE COMMUNITY COLLEGE;
LANE COMMUNITY COLLEGE
BOARD OF EDUCATION;
JERRY MOSKUS in his official capacity as President of Lane Community College; and LINDA P. FOSSEN in her official capacity as Vice President for Student Services of Lane Community College,

Respondents.

AFFIDAVIT OF J.R. MOSKUS

STATE OF OREGON)

) ss.

County of Lane)

I, J.R. MOSKUS, being first duly sworn, depose and say:

1. I am the President of Lane Community College and have been at all times during the litigation of *Hollingsworth et al v. Lane Community College et al.* I make this affidavit from my personal knowledge and in connection with Respondents' Brief in Opposition.

2. As President of the College, I work with and am accountable to the Board of Education for the Lane Community College District. The Board consists of seven elected, non-paid members. The Board has primary authority for establishing policies governing the operation of the College and adopting the College's annual budget. Their charge is to oversee the development of programs and services that they believe will best serve the needs of the people of the Lane District.

3. The Board periodically reviews all College policies.

4. In accordance with the policies of the Board, I am authorized as President of the College to establish all further procedures, make all decisions, take all actions, and develop all activities consistent with the Board's policies.

5. I ensure that the College operates within the boundaries established in Board policies.

6. The Board policy that pertains to the student activity fees at issue in this case is Policy Number D.090, entitled Tuition and Fees. A true and correct copy of the current version of Policy D.090 is attached to my Affidavit as Exhibit A. The policy is also available on Lane Community College's web site at http://lanecc.edu/presoffc/board/D090.htm.

7. The Board first adopted Policy D.090 on August 10, 1977. The policy was revised on July 12, 2000. The revised policy provides as follows:

> Students may be assessed a mandatory fee for the purpose of supporting a board approved student-initiated program. The board will approve those student-initiated programs that it determines provide educational value to the students. After board approval, the fee initiative will be placed on the ballot for the student elections. The student election results, as they relate to the fee initiative, are advisory only. After the student elections, the fee initiative will come before the board for final approval or disapproval.

8. The Board duly revised Policy D.090 in accordance with its periodic review of policies to address the decision in *Board of Regents of the University of Wisconsin System v. Southworth,* 529 U.S. 217 (2000).

9. The revision to Policy D.090 was given a first reading before the Board on June 14, 2000 at a regularly called Board meeting. The revision to Policy D.090 was approved by unanimous vote of the Board after its second reading on July 12, 2000 and became effective July 12, 2000.

10. The College has in the past funded student-initiated programs or student groups from mandatory student activity fees on a viewpoint-neutral basis, and the College will continue to do so into the future. The revision to Policy D.090 seeks to ensure that is so.

11. The Board's revised policy reflects that students will be presented with fee initiatives for support of student-initiated programs. However, student election results are advisory only. The Board approves or disapproves all fee initiatives.

12. The revised policy has been followed since its revision in July 2000, and it will be followed in the future by me and by the College.

13. I know of no Board member or member of the College administration opposed to Policy D.090 and I know of no other interest in changing the policy in the future to allow students to control funding for student-initiated programs on the basis of their content or viewpoint.

/s/ J.R. Moskus
J.R. Moskus

SUBSCRIBED AND SWORN TO before me this 21st day of February, 2001.

/s/ Lorelei Kyllonen
(NOTARY SEAL)Notary Public for Oregon
My Commission Expires: 02/08/03

EXHIBIT A to J.R. Moskus Affidavit

BOARD OF EDUCATION POLICIES

POLICY NUMBER: D.090
POLICY TYPE: MISCELLANEOUS
POLICY TITLE: TUITION AND FEES

Students may be assessed a mandatory fee for the purpose of supporting a board approved student-initiated program. The board will approve those student-initiated programs that it determines provide educational value to the students. After board approval, the fee initiative will be placed on the ballot for the student elections. The student election results, as they relate to the fee initiative, are advisory only. After the student elections, the fee initiative will come before the board for final approval or disapproval.

ADOPTED: November 9, 1998
REVISED: July 12, 2000

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Please address comments regarding this page to Tracy Simms

URL http://www.lanecc.edu/presoffc/board/D090.htm

Revised 1/25/99 (llw)

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